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Executive Orders

EXECUTIVE ORDER MJF 97-29

Bond Allocation—Town of Arcadia

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the Act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish (1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the Town of Arcadia has requested an allocation from the 1997 Ceiling to be used to finance the acquisition and renovation of a chicken processing plant owned by Randall Farms, in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M. J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$8,200,000	Town of Arcadia	Randall Farms, L.L.C.

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect, provided that such bonds are delivered to the initial purchasers thereof on or before November 17, 1997.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

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 19th day of August, 1997.

M. J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9709#024

EXECUTIVE ORDER MJF 97-30

Bond Allocation—Village of Choudrant

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the Act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish (1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997 Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the Village of Choudrant has requested an allocation from the 1997 Ceiling to be used to upgrade and equip a feed mill owned by Randall Farms and located at 3969 Elm Street, Choudrant, Louisiana, in accordance with the provisions of Section 143 of the *Internal Revenue Code of 1986*, as amended;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$575,000	Village of Choudrant	Randall Farms, L.L.C.

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general

purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect, provided that such bonds are delivered to the initial purchasers thereof on or before November 17, 1997.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the *Internal Revenue Code of 1986*, as amended.

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

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 19th day of August, 1997.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9709#025

EXECUTIVE ORDER MJF 97-31

Royal Street Project Advisory Board

WHEREAS: the New Orleans Court Building, which occupies the 400 block of Royal in the French Quarter, was constructed as a joint project between the City of New Orleans and State of Louisiana during the period of 1907 to 1910;

WHEREAS: in October of 1910, the Louisiana Supreme Court moved from the Cabildo to join the Orleans Court of Appeal and various state and city offices in the New Orleans Court Building, where it stayed until the 1950's;

WHEREAS: when the Louisiana Supreme Court began to outgrow its present location on Loyola Avenue, the court began studying the feasibility of returning to the New Orleans Court Building (hereafter the "Royal Street Project");

WHEREAS: the Royal Street Project is the proposed future site of the Louisiana Supreme Court, the Louisiana Fourth Circuit Court of Appeal, the Law Library of Louisiana, the Louisiana Judicial Administrator's Office, a satellite office of the Louisiana Attorney General, and a museum or tourist information center;

WHEREAS: more than \$7 million has been expended to date on planning, renovations, and construction since the

Royal Street Project received its first legislative appropriation in 1981;

WHEREAS: considering the historical significance of the building, the high cost of renovation projects, the project's fast-approaching completion date, and the complications that can normally arise in a project of this size and nature, the interests of the citizens of the State of Louisiana would be best served by the creation of an advisory board, composed of local businessmen and attorneys who have earned the public's confidence as experienced developers, to advise the Louisiana Supreme Court and Division of Administration with regard to all plans and contracts for the project; and

WHEREAS: the Speaker of the Louisiana House of Representatives and President of the Louisiana Senate, as representatives of the legislative branch, have indicated their agreement to representatives of the judicial and executive branches, that they find the creation of an advisory board serves the best interests of the citizens of this state, and they approve of the proposed objectives and membership of the advisory board for the Royal Street Project;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Royal Street Project Advisory Board (hereafter "advisory board") is created and established within the Executive Department, Office of the Governor.

SECTION 2: The duties of the advisory board shall include, but are not limited to, the following:

A. providing advice to the Division of Administration and the Louisiana Supreme Court regarding the expenditure of all funds and all contracts, bids, proposals, and plans associated with the Royal Street Project;

B. providing consulting advice for all planning, development, and/or construction associated with the Royal Street Project; and

C. preparing the documentation for all future requests for legislative appropriations for the Royal Street Project and presenting the appropriation requests to the commissioner of Administration and the legislative committees and/or leadership of the Louisiana Legislature.

SECTION 3: The advisory board shall consist of at least five members appointed by and serving at the pleasure of the Governor, four of whom shall be well known and respected within the New Orleans business community for possessing an expertise in historical renovations and/or the development and management of significant building construction projects. The membership of the advisory board shall be composed as follows:

A. the Chief Justice of the Louisiana Supreme Court, or the designee of the Chief Justice; and

B. at least four members selected from the New Orleans business community.

SECTION 4: The chair and vice-chair of the advisory board shall be appointed by the Governor from its membership.

SECTION 5: The advisory board shall meet at the call of the chair.

SECTION 6: Support staff for the advisory board and facilities for their meeting shall be provided by the Division of Administration and/or the Louisiana Supreme Court.

SECTION 7: Advisory board members shall not receive compensation or a per diem. Nonetheless, contingent on the availability of funds, advisory board members who are not employed by the state or an elected official may receive reimbursement for actual travel expenses, in accordance with state guidelines and procedures, upon the approval of the commissioner of Administration.

SECTION 8: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the advisory board in implementing the provisions of the Order.

SECTION 9: This Order is effective upon signature of the Governor and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the City of Baton Rouge, on this 19th day of August, 1997.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9709#026

EXECUTIVE ORDER MJF 97-32

Coordinating Council on Domestic Violence

WHEREAS: domestic violence is a pervasive social evil that potentially can devastate its direct and indirect victims physically, emotionally, spiritually, and financially;

WHEREAS: the stability and success of the family unit is threatened by domestic violence as it victimizes the entire family, including the children, who learn through example that violence is an acceptable mode of coping with problems, dealing with stress, and asserting control over others;

WHEREAS: domestic violence has a negative impact on society in general, necessitating that millions of dollars be annually expended due to absenteeism and a loss of productivity at work and school, mental health and medical expenses, and the prosecution and/or administrative costs of criminal, quasi-criminal, and civil cases;

WHEREAS: the goal of eradicating domestic violence throughout Louisiana may only be achieved by increasing public awareness about the prevalence and harmfulness of domestic violence, implementing a firm public policy against domestic violence, and instituting an effective means of enforcement that encompasses law enforcement, social service agencies, and the courts; and

WHEREAS: to obtain this goal, the State of Louisiana must implement consistent, coordinated, and nonvictim

blaming responses to incidents of domestic violence throughout the response process, beginning with law enforcement and continuing through victim protection and assistance services and the administration of justice process; therefore, the leadership of the State of Louisiana, including members of the Louisiana Legislature, the Executive Branch, and the Louisiana Supreme Court, together with representatives from law enforcement agencies, social service agencies, and special interest organizations that deal with domestic violence, must join together to develop a comprehensive coordinated response to domestic violence within the State of Louisiana;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Coordinating Council on Domestic Violence (hereafter "council") is established within the Executive Department, Office of the Governor.

SECTION 2: The duties of the council shall include, but are not limited to, the following:

A. examining the current responses of public agencies, the courts, and private organizations to situations of domestic violence;

B. identifying barriers, breakdowns, or areas for improvement among those who are charged with the public duty of responding to domestic violence;

C. making recommendations for improved cooperation and coordination between public agencies and those entities which volunteer or offer assistance and services;

D. identifying various means of promoting public awareness, and educating the public about domestic violence;

E. evaluating the effectiveness of Louisiana's statutory and jurisprudential laws on domestic violence; and

F. evaluating the model code on domestic and family violence prepared by the National Council of Juvenile and Family Court Judges.

SECTION 3: The council shall submit to the Governor a detailed written report containing the council's findings and recommendations on or before December 31, 1998.

SECTION 4: The council shall consist of 20 members who shall be appointed by and serve at the pleasure of the Governor. The membership of the council shall be selected as follows:

A. the president of the Louisiana Senate, or the president's designee chosen from the membership of the Senate;

B. the speaker of the House of Representatives, or the speaker's designee chosen from the membership of the House;

C. the executive director of the Office of Women's Services, Office of the Governor, or the executive director's designee;

D. the secretary of the Department of Social Services, or the secretary's designee;

E. the secretary of the Department of Corrections, or the secretary's designee;

F. a member of the Louisiana Supreme Court;

G. two district court judges, one who presides over a criminal docket and one who presides over a family/domestic docket;

H. three members of the Louisiana Coalition Against Domestic Violence;

I. a member of the Louisiana District Attorneys Association;

J. a member of the Family Law Committee of the Louisiana State Bar Association;

K. a member of the Louisiana Association of Criminal Defense Lawyers;

L. a member of the Louisiana Council on Child Abuse;

M. a member of the Louisiana Trial Lawyers Association;

N. a member of the Louisiana Clerks of Court Association;

O. a member of the Louisiana Sheriff's Association;

P. a member of the Chiefs of Police Association; and

Q. a member of the Louisiana Commission on Law Enforcement.

SECTION 5: The chair shall be selected by the Governor from its membership.

SECTION 6: The council shall meet at regularly scheduled intervals and at the call of the chair. A majority of the membership present shall constitute a quorum.

SECTION 7: Support staff for the council shall be provided by the Department of Social Services.

SECTION 8: Council members shall not receive compensation or a per diem. Nonetheless, contingent upon the

availability of funds, members who are not an employee of the State of Louisiana or one of its political subdivisions, or an elected or appointed public official, may receive reimbursement from the Office of the Governor for actual travel expenses incurred, in accordance with state guidelines and procedures, and upon the approval of the commissioner of Administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate in the implementation of this Order.

SECTION 10: This Order is effective upon signature of the Governor and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

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 26th of August, 1997.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9709#027

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of the Commissioner

Alternative Livestock—Imported Exotic Deer and
Imported Exotic Antelope, Elk, and Farm-Raised
White-Tailed Deer (LAC 7:XXI.1501-1523)

Editor's Note: All Agriculture and Forestry rules, found at LAC, Title 7, will be renumbered during the next few months, so that each Part (I through XLIII) will begin with a Chapter 1 and continue with sequential chapters (through Chapter 99), as needed. A revised *Louisiana Administrative Code*, Title 7, is scheduled for publication during Fall, 1997. As shown below, the *Louisiana Register* is promulgating all Title 7 emergency, proposed, and final rules under the new numbering system.

In accordance with the Administrative Procedure Act, specifically R.S. 49:953(B), and R.S. 3:3101, the commissioner of Agriculture and Forestry finds that these emergency rules regulating the raising, slaughtering, and sale of imported exotic deer and antelope, elk, and farm-raised white-tailed deer for commercial purposes in the state of Louisiana are necessary to prevent imminent peril to the health, safety, and welfare of the citizens of Louisiana.

Without regulations in place, diseased or contaminated animals may be brought into the state of Louisiana or slaughtered and sold as food to be consumed by Louisiana citizens. Louisiana is certified by the United States Department of Agriculture (USDA) as a tuberculosis- and brucellosis-free state. The introduction of any imported exotic deer and antelope, elk, and farm-raised white-tailed deer infected with either of these diseases or other diseases will subject Louisiana cattle and other livestock to infection. Any infection of cattle or other livestock will cause the owner of such livestock to lose the commercial value of such animals. In addition, introduction of these diseases into the state will jeopardize Louisiana's certifications from the USDA. The loss of the commercial value of infected livestock, as well as the loss of USDA certification, will cause a substantial adverse economic impact on the agricultural economy of this state. Permanent regulations are being promulgated; however, the time delay required by the Administrative Procedure Act precludes adoption of permanent regulations before the first set of emergency rules expire. It is, therefore, necessary to readopt emergency rules to avoid a hiatus in the law.

For these reasons, the commissioner has determined that these emergency rules are necessary in order to immediately regulate the raising, slaughtering, and sale of imported exotic deer, and antelope, elk, and farm-raised white-tailed deer for commercial purposes in the state of Louisiana.

These emergency rules are effective at 6 p.m. on September 3, 1997 and shall remain in effect 120 days or until the final rules become effective, whichever occurs first.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 15. Alternative Livestock—Imported Exotic Deer and Imported Exotic Antelope, Elk, and Farm-Raised White-Tailed Deer

§1501. Statement of Authority and Purpose

The commissioner of Agriculture and Forestry heads and directs the Department of Agriculture and Forestry and exercises all functions of the state relating to the promotion, protection, and advancement of agriculture and forestry. The commissioner is authorized by law and does hereby adopt these rules and regulations for the purposes of promoting, protecting, and advancing agriculture and to implement the laws adopted by the legislature, including those in Part I of Chapter 19-A of Title 3 of the Revised Statutes, giving the commissioner the specific power to regulate farm-raised exotic animals, including imported exotic deer and imported exotic antelope, elk, and farm-raised white-tailed deer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1503. Definitions

For purposes of these rules and regulations the following words and phrases shall have the meaning given herein:

Alternative Livestock—any imported exotic deer and imported exotic antelope, elk, and farm-raised white-tailed deer.

Commercial Purpose—the keeping, breeding, raising, containing, harvesting, killing, slaughtering, buying, selling, trading, or transferring ownership of alternative livestock, any alternative livestock carcass or part thereof, with the intent to receive money, goods, services, livestock, or any other type of compensation in connection therewith.

Commissioner—The commissioner of Agriculture and Forestry.

Department—the Louisiana Department of Agriculture and Forestry.

Elk—any animal of the species and genus *Cervus canadensis*.

Farm—any area of land or water, regardless of size, used to breed, raise, or keep farm-raised alternative livestock for a commercial purpose, including but not limited to, breeding farms or propagating preserves. This definition does not include areas of land or water which are part of a zoo, game park, or wildlife exhibit where the primary purpose is the exhibition of alternative livestock or other animals.

Farm-Raised—any alternative livestock born, raised, or kept within a closed circumscribed fenced area for a commercial purpose. This definition does not include alternative livestock which are part of a zoo, game park, or wildlife exhibit where the primary purpose is the exhibition of the alternative livestock or other animals.

Farm-Raised White-Tailed Deer—any animal of species and genus *Odocoileus virginianus* which is bred, born, raised, and/or kept within a closed circumscribed fenced area for the purpose of buying, selling, or trading in commerce. Farm-raised white-tailed deer does not include any white-tailed deer which is part of any zoo, game park, or wildlife exhibit where the primary purpose of the same is the exhibition of white-tailed deer and/or other animals.

Imported Exotic Antelope—any animal of the family *Bovidae* which is not indigenous to North America, except animals of the tribes *Bovine* (cattle) and *Caprine* (sheep and goats).

Imported Exotic Deer—any animal of the family *Cervidae* which is not indigenous to North America, including but not limited to, red deer, seika deer and fallow deer.

Person—any individual, corporation, partnership, or other legal entity.

Quarantine—the requirement, resulting from an order of the department or the state veterinarian, to secure and physically isolate an animal, or animals, in a specified confined area to prevent the spread of contagious disease.

White-Tailed Deer—any animal of the species and genus *Odocoileus virginianus*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1505. Issuance of Farm-Raising License; Renewals

A. Any person who keeps, breeds, raises, contains, harvests, kills, slaughters, buys, sells, trades, or transfers ownership of any type of farm-raised alternative livestock for commercial purposes shall obtain a farm-raising license from the department prior to engaging in such activity.

B. The department shall not issue any farm-raising license until the application for the farm-raising license and the information requested, including the required plan for the operation of the farm, is approved by the department and the proposed farm passes the department's inspection.

C. Any changes in any information submitted in the original application, occurring during or after the application process, shall be submitted in writing to the department. The department must approve, in writing, any change or modification, which shall be in writing, in the written farm operation plan submitted with the original application before such change or modification may go into effect.

D. A farm-raising license shall be valid for the period beginning with the date of issuance and ending the following June 30 or from July 1 of the year of renewal through the following June 30.

E. A farm-raising license may be renewed each year by the department. A licensee shall submit a written request for renewal, the renewal fee, any proposed modification, which shall be in writing, of the written farm operation plan previously submitted to and approved by the department and any proof requested by the department of compliance by the licensee with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine. If either the written request for renewal or the renewal fee is received by the department after July 31,

the farm-raising license shall be deemed expired, *ipso facto*, retroactive to June 30.

F. In the event that the department determines that a farm does not meet the requirements of or was not complying with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine, the farm-raising license may not be renewed by the department.

G. The licensee may contest the department's decision not to renew a farm-raising license by filing a written request for an adjudicatory hearing with the department within 15 days from receipt of the notice of nonrenewal. Such a hearing is to be held in accordance with the provisions of the Administrative Procedure Act. Any such hearing shall be held within 30 days of the request, unless continued for good cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1507. Fees

A. Farm-Raising License Fees

1. The fee for a new farm-raising license shall be \$50.
2. The farm-raising license renewal fee shall be \$50.
3. The department shall waive the farm-raising license fee for any person who obtains a farm-raising license from this department, and who holds a valid game breeders license issued by the Department of Wildlife and Fisheries for the possession of any alternative livestock at the time these rules and regulations become effective, and who submits a written application within the calendar year that these rules and regulations become effective.
4. The waiver granted in §1507.A.3 applies only to a new farm-raising license and shall not apply to any renewal of a farm-raising license issued by the department under these rules and regulations.

B. Harvesting Permit Fee

1. Each individual intending to harvest or kill any farm-raised alternative livestock at any farm licensed by the department shall obtain a harvesting permit from the department, before harvesting or killing any farm-raised alternative livestock, except as provided by §1507.A.3, herein.
2. The fee for each harvesting permit shall be \$50.
3. No licensee or those persons employed by or assisting such licensee harvesting farm-raised alternative livestock to be taken directly to a state- or federally-approved slaughter facility or capturing farm-raised alternative livestock to be sold or traded for breeding or stocking purposes shall be required to obtain a harvesting permit or pay a fee.

C. Farm-Raised Alternative Livestock Tag Fee

1. Each farm-raised alternative livestock harvested or killed shall have a farm-raised tag attached to the carcass before it leaves the farm, except as provided in §1507.A.3.
2. The farm-raised alternative livestock tag shall be provided by the department at a cost of \$5 per tag.
3. No farm-raised tag shall be required for farm-raised alternative livestock which are to be taken directly to a

state- or federally-approved slaughter facility or which are sold or traded alive for breeding or stocking purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1509. Farm-Raising Licensing Requirements

A. Written Application. Each applicant for a farm-raising license shall submit a completed written application on a form supplied by the department. In addition to any other information that may be requested by the department, the applicant shall provide the following information:

1. name, physical address, mailing address, and telephone number of the applicant and whether the applicant will own or lease the land. If the land is leased, then a copy of the lease shall be provided to the department;

2. the name under which the business will operate, the physical address, mailing address, and telephone number of the business, if different than the information provided in §1509.A.1 of this provision;

3. the business structure (sole proprietorship, partnership, corporation, limited liability company, joint venture, or otherwise);

4. the name of the person or persons in charge, position, (e.g., owner, manager, etc.), residence address, and phone number;

5. the physical location and size of the farm;

6. a topographical map of the farm if 50 acres or more;

7. the species of alternative livestock to be farm-raised;

8. the approximate number of animals to be farm-raised;

9. the complete plan for the operation of the farm, including:

a. an enclosure system, including fencing the farm, indicating the location, size, nature, and extent of the fencing material and of any right-of-way related to the farm property;

b. systematic inspection of the enclosure system, including the fence, maintenance, repair, and replacement of the fence, keeping the fence and any clearance along either side of the fence clear, and verification to the department of compliance with this provision;

c. the capture of any farm-raised alternative livestock that may escape from or wild white-tailed deer that may enter the farm through a breach or opening in the enclosure system or fence;

d. removal of white-tailed deer from the farm prior to completion of the enclosure of the farm;

e. controlling farm-raised alternative livestock population;

f. identification by means of an electronic implant of all white-tailed deer born, bought, sold, traded, or which otherwise become farm-raised white-tailed deer, which shall include the systematic capture of farm-raised white-tailed deer for implantation purposes;

g. the removal and disposal of all alternative livestock in the event that the farm ceases operation for any reason or upon revocation or nonrenewal of the farm-raising

license, including a provision for written notice to the department prior to cessation of farming operation;

h. the type of farming operation records that will be kept;

10. a statement that the applicant shall abide by the requirements of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine;

11. a certified statement that all representations contained in the application, the farm operation plan, and attachments are true and correct.

B. Farm Inspection. An applicant shall have the proposed farm physically inspected and approved by the department before a farm-raising license may be issued by the department. To obtain department approval a proposed farm shall:

1. be located in a rural area of the state;

2. be securely enclosed by an enclosure system, including fencing, that meets the following specifications:

a. a minimum height, above the relevant ground, of 8 feet. Fences or enclosure systems installed prior to April 22, 1997, which have a minimum height of 7 feet, may remain at that height until replaced;

b. a minimum gauge wire of 12½;

c. fencing material of chain link, woven wire, solid panel, or welded panel or, if made with any other material, approved in writing by the department. Welded wire fences shall not be used unless they were approved by the Department of Wildlife and Fisheries and installed prior to April 22, 1997. Such welded wire fences, when replaced or partially replaced, shall be replaced by fencing required by these rules and regulations;

3. have drainage sufficient to leave a majority of the farm free from extended periods of standing water;

4. have adequate space, and if the total enclosed area of the farm is less than 50 acres, allow at least 5,000 square feet for the first elk or farm-raised white-tailed deer placed on the farm and at least 2,500 square feet for each subsequent elk or farm-raised white-tailed deer;

5. have no condition which may cause noncompliance with or substantial difficulty in complying with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine.

C. Any person who has completely finished fencing the proposed farm prior to April 22, 1997 shall be exempt only from the requirement to submit a plan for the removal of white-tailed deer from the farm due to, and in accordance with, the provisions of Article 3415 of the *Louisiana Civil Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1511. Grounds for Refusal to Issue or Renew a Farm-Raising License

The commissioner may refuse to issue or renew a farm-raising license for any of the following circumstances:

1. the applicant cannot demonstrate, to the satisfaction of the commissioner, a competency to operate an alternative livestock farm;

2. the applicant has failed to provide all of the information required in or with the farm-raising license or renewal application, or has provided false information to the department;

3. the applicant has previously refused to permit the department to inspect the farm or to inspect farm records, or the applicant has otherwise failed to comply with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine;

4. the department does not approve the farm operation plan;

5. the proposed farm does not pass the department's inspection;

6. the applicant has previously been found in violation of either Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, or any quarantine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1513. Obligations of the Farm-Raising Licensee

A. Identification of Farm-Raised Alternative Livestock

1. All farm-raised white-tailed deer shall be identified by means of an electronic implant implanted as follows:

a. the electronic implant shall be implanted into the subcutaneous tissue at the base of the left ear or in either shoulder;

b. all farm-raised white-tailed deer being brought into Louisiana shall have the electronic implant implanted before or upon arrival at the farm and prior to being released on the farm;

c. farm-raised white-tailed deer born in this state shall have an electronic implant implanted the first time the farm-raised white-tailed deer is captured alive and before the farm-raised white-tailed deer leaves the farm;

d. each electronic implant code shall be listed on the farm-raised white-tailed deer's health certificate and on the bill of sale or certificate of transfer.

2. All farm-raised alternative livestock other than farm-raised white-tailed deer shall be permanently and individually identified as follows:

a. by means of an electronic implant or by a permanent ear tattoo and ear tag;

b. the electronic implant shall be implanted into the subcutaneous tissue at the base of the left ear or in either shoulder;

c. prior to entering the state, alternative livestock, other than farm-raised white-tailed deer, shall be identified as required herein;

d. alternative livestock born in this state, other than farm-raised white-tailed deer, shall be identified, as required herein, the first time any such animal is captured alive and before any such animal leaves the farm;

e. the identification number or electronic implant code shall be listed on the health certificate and on the bill of sale or certificate of transfer.

3. Farm-raised alternative livestock, other than farm-raised white-tailed deer, that will be transported directly to a state- or federally-approved slaughter facility are exempt from this identification requirement.

4. Farm-raised alternative livestock placed on a farm prior to the effective date of these regulations, other than farm-raised white-tailed deer, are not required to be identified by a permanent ear tattoo and ear tag or electronic implant unless removed alive from the farm.

B. Record Keeping

1. Each licensee shall maintain records, for not less than 36 months, of all sales, deaths, kills, trades, purchases, or transfers of any farm-raised alternative livestock. The records shall include:

a. the total number of farm-raised alternative livestock, carcasses, or parts thereof, killed, sold, traded, purchased, or transported;

b. the name and address of the person to whom each farm-raised alternative livestock, or any carcass, or parts thereof, was sold, traded, delivered, presented, or transported to;

c. the electronic implant code or identification number of the farm-raised alternative livestock;

d. copies of any health certificates issued;

e. accurate records showing all inspections, maintenance, repairs, and replacement to the enclosure system, including the fence; and such records shall include the dates and times of each, names of the persons performing services, the location of any breaches of the enclosure system, including the fence, and nature and location of any repairs or replacements made to the fence.

f. records customarily kept in the normal course of conducting business and those records required by these rules and regulations.

2. Sellers, traders, or transferors of farm-raised alternative livestock, any carcass, or any part thereof, shall furnish the purchaser or transferee with a bill of sale or letter of transfer as verification of the farm-raised status.

3. The furnishing of any false information shall be a violation of these rules and regulations.

C. Enclosure System and Fence Inspection and Maintenance

1. Any licensee shall conduct or shall have conducted a visual ground inspection of the enclosure system, including the fence, along the entire perimeter of the fenced area of the farm no less than weekly. An inspection shall be conducted immediately after any major storm or occurrence of any other force of nature that would cause a reasonable person to be concerned about the integrity of the enclosure system, including the fence.

2. Any licensee shall maintain the enclosure system, including the fence, in good repair at all times. Good repair means that farm-raised alternative livestock are not able to leave and wild white-tailed deer are not able to enter through the enclosure system, including the fence, or otherwise.

3. Any licensee who discovers a breach or opening in the enclosure system or fence that would allow farm-raised

alternative livestock to leave from or wild white-tailed deer to enter into the enclosed area shall notify the department, orally and in writing, of the breach or opening.

4. In the event of such a breach or opening, the licensee shall immediately close the breach or opening and make all reasonable efforts to determine if farm-raised alternative livestock left from or wild white-tailed deer entered into the area enclosed by the fence.

D. Other Obligations of the Farm Licensee

1. A licensee shall remove white-tailed deer from the farm prior to completion of the fencing and enclosure system of the farm, unless the fencing and enclosure system was completed prior to April 22, 1997. Removal of the white-tailed deer shall be accomplished to the satisfaction of the department. The department's judgment as to whether the removal of the white-tailed deer has been satisfactorily accomplished shall be the exclusive determinative factor and shall be final.

2. A licensee shall control the population of farm-raised alternative livestock on the farm.

3. A licensee shall make all efforts that a reasonable licensee would make to capture any farm-raised alternative livestock that escapes from the fenced area of the farm and to remove wild white-tailed deer that enter the fenced area of the farm.

4. A licensee shall notify the department, in writing, at least 10 days prior to placing any alternative livestock on the farm if such alternative livestock was not listed on the original application or on any modification previously approved, in writing, by the department.

5. A licensee, upon cessation of operations or upon revocation or nonrenewal of the farm-raising license, shall remove and dispose of all farm-raised alternative livestock on the farm in accordance with the farm operation plan submitted to and approved by the department or in accordance with specific written instructions issued by the department in the event that circumstances warrant removal and disposal of the farm-raised alternative livestock in a manner different from the farm operation plan.

6. A licensee shall be responsible for ensuring that any individual who harvests or kills any farm-raised alternative livestock on the licensee's farm does so in accordance with these rules and regulations.

7. A licensee shall harvest or kill farm-raised alternative livestock in accordance with these rules and regulations.

8. A licensee shall provide that all farm-raised alternative livestock have the necessary health certificates and that the farm-raised alternative livestock meet all applicable health requirements.

9. A licensee shall allow authorized representatives of the department to inspect the farm at any time, and all books and records at any reasonable time.

10. A licensee shall comply with all provisions of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1515. Health Certificates and Health Requirements

A. Prior to entering Louisiana, all alternative livestock, except those being transported directly to a state- or federally-approved slaughter facility, shall:

1. meet the general health requirements promulgated at LAC 7:XXI.107;

2. have an entry permit number issued by the State Veterinarian's Office no more than 15 days before entry into Louisiana, which entry number shall be included on the certificate of veterinary inspection;

3. have written proof of a negative test for brucellosis in accordance with the *Brucellosis Eradication in Cervidae Uniform Methods and Rules*, as and when published by the United States Department of Agriculture, Animal and Plant Health Inspection Service. Until such time as the *Brucellosis Eradication in Cervidae Uniform Methods and Rules* are published, all alternative livestock 6 months of age and older entering Louisiana, except those being transported directly to a state- or federally-approved slaughter facility, shall be tested negative for brucellosis within 30 days prior to entry into Louisiana, and written proof thereof shall be provided, unless the alternative livestock originate from a herd which has been officially declared a certified brucellosis-free herd by the state of origin;

4. have written proof of a negative test for tuberculosis in accordance with the *Tuberculosis Eradication in Cervidae Uniform Methods and Rules*, as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service.

B. Any alternative livestock which has been exposed to brucellosis or tuberculosis shall be quarantined and tested for the diseases to which it has been exposed within 60 days of the date of the quarantine. The quarantine shall remain in effect until removed, in writing, by the State Veterinarian's Office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1517. Harvesting or Killing of Farm-Raised Alternative Livestock

A. Farm-raised white-tailed deer shall be harvested by killing only during the period of October 1 through January 31 of the following year, unless otherwise specifically authorized, in writing, by the department.

B. Except for farm-raised white-tailed deer, farm-raised alternative livestock may be harvested or killed at any time unless the commissioner provides otherwise in accordance with the provisions of §1517.C.

C. The commissioner may establish, by written order, other dates and conditions for the harvesting or killing of farm-raised alternative livestock as the commissioner deems necessary to carry out the purposes of Part I of Chapter 19-A of Title 3 of the Revised Statutes. Such orders shall be issued by the commissioner in January of each year or as soon thereafter as is practical and published in the January issue of the *Louisiana Register* or in the first available issue after any such order is issued.

D. Prior to harvesting or killing farm-raised alternative livestock, any person, except as provided by §1507.B.3, shall

first apply for and obtain a harvesting permit to do so by submitting an application on a form supplied by the department.

1. Any harvesting permit issued by the department shall be valid only for the time periods stated on the face of the permit.

2. The department may issue a harvesting permit upon written application by any individual or by any farm licensee making application on behalf of the individual and upon receipt of the harvesting permit fee.

E. Except as provided by §1507.C.3 of these regulations, any farm-raised alternative livestock harvested or killed, shall have a farm-raised tag attached to each carcass.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1519. Prohibitions

A. No farm-raised alternative livestock shall be released into the wild without express written permission from both the department and the Department of Wildlife and Fisheries.

B. Farm-raised white-tailed deer meat shall not be bought, sold, traded, or moved in commerce in any way.

C. Farm-raised alternative livestock sold for slaughter, except farm-raised white-tailed deer, the sale of which is prohibited, shall be handled in accordance with state and federal meat inspection laws and regulations.

D. It is a violation of these regulations to sell, purchase, trade, transport, or otherwise transfer any farm-raised alternative livestock for any purpose other than immediate slaughter at a state- or federally-approved slaughter facility if such farm-raised alternative livestock originates from a herd which is under quarantine for brucellosis or tuberculosis.

E. Failure to comply with any provision of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, or any quarantine is prohibited, and each act or omission or each day of a continuing violation shall constitute a separate violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1521. Enforcement

A. The department's authorized representatives may, at any time, enter and inspect all farms on which farm-raised alternative livestock are located for the purposes of issuing, renewing, or reviewing farm-raising licenses and to insure compliance with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine.

B. Authorized representatives of the department may inspect, during any reasonable hours, any records regarding or relating to any farm-raised alternative livestock.

C. Farm-raised alternative livestock which escape from the enclosure system of the farm, if not captured by a licensee within 96 hours of the escape, may be captured by authorized representatives of the department or by any law enforcement agency by whatever means deemed necessary by that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

§1523. Penalties

A. The commissioner may suspend or revoke the farm-raising license of any licensee and the harvesting permit issued to any person found guilty of violating Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine.

B. The commissioner may, in addition to suspending or revoking any farm-raising license or harvesting permit, impose upon any person charged with violating any provisions of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, and any quarantine, a fine for up to \$100 per violation for each violation of which such person is found guilty.

C. These civil penalties may be assessed only by a ruling of the commissioner based on an adjudicatory hearing held in accordance with the Administrative Procedure Act.

D. The commissioner may seek a restraining order, injunctive relief, or other relief in a proper court of law to restrain violations of or to compel compliance with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department, or and any quarantine or to enforce any order or ruling made by him in an adjudicatory proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 23:

Bob Odom
Commissioner

9709#019

DECLARATION OF EMERGENCY

Department of Economic Development Racing Commission

Blanks and Envelopes
(LAC 35:XI.9937)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule, effective August 29, 1997.

This emergency rule shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever occurs first.

The Racing Commission finds it necessary to amend this rule to further clarify its intent and to prevent future discrepancies and voided claims due to the spelling of horses' names.

Title 35

HORSE RACING

Part XI. Claiming Rules and Engagements

Chapter 99. Claiming Rule

§9937. Blanks and Envelopes

All claims shall be on blanks and in envelopes furnished by the association and approved by the commission. Both blanks and envelopes must be filled out completely, and the horse's name must be spelled accurately to identify the claim, otherwise the claim shall be void. The horse's name shall be spelled as it appears in the official racing program of the association, otherwise the claim shall be void.

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:446 (December 1976), repromulgated LR 3:42 (January 1977), LR 4:286 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 23:

Paul D. Burgess
Executive Director

9709#018

DECLARATION OF EMERGENCY

**Department of Economic Development
Racing Commission**

Pari-Mutuel Tickets
(LAC 35:XV.12341)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective August 29, 1997; and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

Due to extensive national simulcasting, the potential problem of failed communication has increased. Paying track odds, instead of refunding nontransmitted wagers, will avert potential litigation. Therefore, the Racing Commission finds it necessary to amend this rule.

Title 35

HORSE RACING

Part XV. Off-track Wagering

Chapter 123. General Rules

§12341. Pari-Mutuel Tickets

A. - B. ...

C. When wagers are accepted by a host track, guest track, or off-track wagering facility and pari-mutuel tickets are issued therefore, such wagers are to be considered enforceable contracts, evidenced by possession of winning tickets, and such tickets shall be honored by all cashiers of the host track and the off-track wagering facility where such wagers are placed. Refunds of wagers shall be made only:

- 1. on a horse that is scratched; or
- 2. if a race is declared off; or

3. if a manual merge is rendered impossible because of an act or event beyond the control of a host track and/or the host track's off-track wagering facility, including but not limited to, a catastrophe or acts of God.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:176 and R.S. 4:211-227.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 14:290 (May 1988), amended by the Department of Economic Development, Racing Commission, LR 17:261 (March 1991), amended LR 23:

Paul D. Burgess
Executive Director

9709#017

DECLARATION OF EMERGENCY

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship and Grant Policy Manual—Tuition
Assistance Program (TAP) and Honors Scholarship

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act in adopting the following changes to the Scholarship and Grant Policy and Procedure Manual.

Acts 287, 1283, and 1375 of the 1997 Regular Legislative Session affect continuing and new recipients of both the Louisiana Tuition Assistance Plan (TAP) and Honors Scholarship. A delay in promulgating rules to address student eligibility would disrupt the lives of affected students and adversely impact their financial condition and that of their families. The agency has, therefore, determined that these emergency rules are necessary in order to prevent imminent peril to the welfare of the affected TAP and Honors Scholarship recipients.

This emergency rule is effective August 15, 1997, and will remain in effect 120 days.

IV. LOUISIANA TUITION ASSISTANCE PLAN (TAP)

AMEND PARAGRAPHS IV.A. AND IV.B. TO READ AS FOLLOWS:

A. Program Description, History and Purpose

The Louisiana Tuition Assistance Plan (TAP) Program, formerly referred to as the Louisiana College Tuition Plan, was first awarded in the fall of 1989, and provides tuition reimbursement for Louisiana residents who enroll in public colleges and universities to pursue an academic undergraduate degree and who meet specific academic standards and financial need criteria. The annual award amount for TAP varies, since it is the actual tuition charged by individual state institutions.

A maximum cumulative award amount is not established; however, there is a five-year limitation on the number of academic years (10 semesters or 15 quarters) a recipient may receive this entitlement. Institutions, after submitting invoices to LASFAC, are reimbursed each term for the tuition and fees awarded for TAP recipients. Effective for academic year 1998-99, the program will be terminated and students

receiving TAP will be continued as TOPS Opportunity award recipients.

B. Legislative Authority

R.S. 17:3026;

Act 789 of the 1989 Regular Legislative Session, effective July 1, 1989;

Act 1055 of the 1990 Regular Legislative Session, effective July 27, 1990;

Act 718 of the 1992 Regular Legislative Session, effective January 1, 1993;

Act 269 of the 1995 Regular Legislative Session, effective January 1, 1996;

Act 872 of the 1995 Regular Legislative Session, effective June 28, 1995;

Act 287 of the 1997 Regular Legislative Session, effective July 15, 1997; and

Act 1375 of the 1997 Regular Legislative Session, effective August 15, 1997, (portions affecting 1996-97 and prior high school graduates).

AMEND PARAGRAPH IV.C.1.o. TO READ AS FOLLOWS:

o. not be receiving a tuition waiver or tuition award from another source including, but not limited to, the Louisiana National Guard Tuition Waiver, the Vocational Rehabilitation Tuition Waiver, the Louisiana Honors Scholarship or any institutional award which is limited to payment of tuition provided that the total cost of the student's tuition would be covered by the TAP award.

AMEND PARAGRAPH IV.C.3.b. TO READ AS FOLLOWS:

b. Achieve a cumulative GPA, as evaluated at the end of each academic year (the conclusion of the spring term), of at least 2.10 after the completion of less than 48 credit hours; at least 2.30 after the completion of 48 credit hours; and at least 2.50 after the completion of 72 credit hours, calculated on a 4.00 scale. Effective with the 1998-99 academic year, students continuing under TOPS who fail to achieve the required cumulative grade point average may be reinstated upon attainment of a cumulative grade point average, as required above, provided that the period of ineligibility did not persist for more than two years from the date of loss of eligibility.

INSERT NEW PARAGRAPH IV.C.3.d. AS FOLLOWS:

d. Effective for the 1997-98 academic year, if a student is placed on academic probation by the college or university attended, the student is ineligible for further TAP payments. The student may be reinstated upon the lifting of academic probation, provided that the period of ineligibility did not persist for more than two years from the date of loss of eligibility.

FORMER PARAGRAPHS IV.C.3.d., IV.C.3.e. and IV.C.3.f. ARE REDESIGNATED AS IV.C.3.e., IV.C.3.f. and IV.C.3.g., RESPECTIVELY.

AMEND FORMER PARAGRAPH IV.C.3.g. AND REDESIGNATE IT AS IV.C.3.h.:

h. TAP recipients prior to Fiscal Year 1997 who were denied continuation because of failure to show financial need, may be reinstated, upon written request, if they have maintained all other requirements for continuation as listed in Section C.3. of Chapter IV.

FORMER PARAGRAPH IV.C.3.h. IS REDESIGNATED AS IV.C.3.i.:

THE FOLLOWING FOOTNOTE HAS BEEN ADDED TO ACCOMPANY PARAGRAPH IV.E.1.:

1. Note: Effective with the 1998-99 award year, campuses of Louisiana Technical College and regionally accredited LAICU member independent colleges and universities are authorized to participate in TOPS, which will replace the TAP program.

AMEND PARAGRAPH IV.E.3.d. TO READ AS FOLLOWS:

d. Institutions may not bill LASFAC for a TAP award if the recipient has elected to accept a tuition waiver or tuition award from another source including, but not limited to, the Louisiana National Guard Tuition Waiver, the Vocational Rehabilitation Tuition Waiver, Louisiana Honors Scholarship or any institutional award which is limited to payment of tuition provided that the total cost of the student's tuition would be covered by the TAP award.

V. LOUISIANA HONORS SCHOLARSHIP PROGRAM

AMEND PARAGRAPHS V.A. AND V.B. TO READ AS FOLLOWS:

A. Program Description, History and Purpose

The Louisiana Honors Scholarship Program, first awarded in the fall of 1992, provides tuition exemption to Louisiana residents to acknowledge, honor and reward the academic achievement of Louisiana's top high school graduates; to ensure that these students have the financial resources to pursue a higher education in one of Louisiana's colleges and universities; and to provide an incentive to these students to seek their higher education in this state. Effective for academic year 1998-99, the program will be terminated and students receiving the Honors Scholarship will be continued as TOPS Performance award recipients.

B. Legislative Authority

R.S. 17:3042:31 through 3042:35;

Act 1085 of the 1992 Regular Legislative Session, effective July 14, 1992;

Act 225 of the 1993 Regular Legislative Session, effective June 2, 1993;

Act 86 of the Third Extraordinary Legislative Session, effective July 7, 1994;

Act 714 of the 1995 Regular Legislative Session, effective June 21, 1995;

Act 1283 of the 1997 Regular Legislative Session, effective July 15, 1997; and

Act 1375 of the 1997 Regular Legislative Session, effective August 15, 1997 (portions affecting 1996-97 and prior year high school graduates).

AMEND PARAGRAPHS V.C.1.e., V.C.1.f. AND V.C.1.g. TO READ AS FOLLOWS:

e. have attained a cumulative high school grade point average of at least 3.00 on a 4.00 scale; and

f. not be receiving other aid which, together with award of the Honors Scholarship, would exceed the student's total cost of attendance as defined by the institution in accordance with federal regulations. This Paragraph shall not preclude an institution from establishing a maximum limitation on aid based upon some other criteria which would result in a limitation that is less than the student's total cost of attendance; and

g. not be receiving a tuition waiver or tuition award from another source including, but not limited to, the Louisiana Tuition Assistance Plan (TAP), the Louisiana National Guard Tuition Waiver, the Vocational Rehabilitation Tuition Waiver or any other institutional award which is limited to payment of tuition provided that the total cost of the student's tuition would be covered by the honors award.

AMEND PARAGRAPH V.C.3.b. TO READ AS FOLLOWS:

b. Maintain by the end of each academic year a cumulative college or Louisiana technical college Grade Point Average (GPA) of at least 3.00 on a 4.00 scale. Effective with the 1998-99 academic year, students who fail to achieve the required cumulative grade point average may be reinstated upon attainment of a 3.00 cumulative grade point average provided that the period of ineligibility did not persist for more than two years from the date of loss of eligibility.

DELETE FORMER PARAGRAPH V.C.3.g. AND REDESIGNATE FORMER PARAGRAPHS V.C.3.h. AND V.C.3.i. as V.C.3.g. AND V.C.3.h., RESPECTIVELY; AND AMEND THE REDESIGNATED V.C.3.g. AND V.C.3.h. TO READ AS FOLLOWS:

g. not be receiving other aid which, together with award of the Honors Scholarship, would exceed the student's total cost of attendance as defined by the institution in accordance with federal regulations. This Paragraph shall not preclude an institution from establishing a maximum limitation on aid based upon some other criteria which would result in a limitation that is less than the student's total cost of attendance; and

h. not be receiving a tuition waiver or tuition award from the state or an institution of higher education including, but not limited to, the Louisiana Tuition Assistance Plan (TAP), the Louisiana National Guard Tuition Waiver, the Vocational Rehabilitation Tuition Waiver or any institutional award which is limited to payment of tuition provided that the total cost of the student's tuition would be covered by the Honors Scholarship.

REDESIGNATE FORMER PARAGRAPH V.C.3.j. AS V.C.3.i. AND INSERT NEW PARAGRAPH V.C.3.j. TO READ AS FOLLOWS:

j. Effective for the 1997-98 Academic Year, if a student attended, the student is ineligible for further payments. The student may be reinstated upon the lifting of academic probation, provided that the period of ineligibility did not persist for more than two years from the date of loss of eligibility.

AMEND PARAGRAPHS V.D.1.f. AND V.C.1.g.iii. TO READ AS FOLLOWS:

f. Each year, by the deadline specified and on the forms provided by LASFAC, city and parish school boards for

public high schools, principals or headmasters for approved special schools and nonpublic BESE-approved high schools, governing boards of eligible non-Louisiana high schools, and Louisiana Department of Education representatives for home study students shall certify and submit to LASFAC the names of students graduating in the top 5 percent of each high school's academic year graduating class who have attained a cumulative high school grade point average of at least 3.00 on a 4.00 scale or the names of those students completing an approved home study program who scored in the upper 5 percent in the state on the National Merit Exam.

g. If the certifying authority (school board, principal, headmaster or State Department of Education representative) elects to notify scholars of their selection, then the following disclaimer Paragraph shall be included in any communication to the scholar:

"Although you have been named a "Louisiana Honors Scholar," you must satisfy all of the following conditions to redeem a scholarship under this program:

iii. You must have attained a cumulative high school grade point average of at least 3.00 on a 4.00 scale,

AMEND PARAGRAPH V.E.3.d. TO READ AS FOLLOWS:

d. LAICU institution's reimbursement is limited to the lesser of actual tuition or the tuition amount charged by the highest cost public institution admitting freshmen. Institutions will be notified each term of the current maximum amount for full-time students and maximum amount for less than full-time students in accordance with Chapter VII.C.3. of this manual. Effective with the continuation of students under TOPS in the fall 1998 term, LAICU institutions may bill for the average tuition paid for students attending public colleges and universities as determined by LASFAC.

VII. GENERAL SCHOLARSHIP/GRANT POLICY

AMEND PARAGRAPH VII.D. TO READ AS FOLLOWS:

D. Release of Scholarship Awards

Awards shall be released to students by the institution if the student is listed on a LASFAC eligibility roster or master listing and is enrolled full-time for the applicable term, except as limited by Chapters IV.C.3.d., V.C.3.j. and VIII.C.3.b. Institutions continue to be responsible for verifying that Rockefeller Scholarship and TOPS-Teacher Award recipients are enrolled in a required field of study prior to the release of award checks.

Glossary

AMEND THE GLOSSARY BY DELETING THE DEFINITION OF *Gratuitous Financial Assistance or Support* IN ITS ENTIRETY.

Jack L. Guinn

Executive Director

9709#011

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)—1997 Eligibility

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act to provide eligibility information for 1997 high school graduates under the Tuition Opportunity Program for Students (TOPS), as follows:

Act 476 of the 1997 Regular Legislative Session affects the welfare of 1997 high school graduates who may be eligible for the Tuition Opportunity Program for Students (TOPS). A delay in promulgating rules to address student eligibility would disrupt the lives of affected students and adversely impact their financial condition and that of their families. The agency has, therefore, determined that these emergency rules are necessary in order to prevent imminent peril to the welfare of the affected graduates.

This emergency rule is effective August 15, 1997, and will remain in effect 120 days.

VIII. TUITION OPPORTUNITY PROGRAM FOR STUDENTS (TOPS)

A. Program Description, History and Purpose

The Tuition Opportunity Program for Students (TOPS) is a comprehensive, merit-based student aid program consisting of a series of components, with each component having its own eligibility criteria and titled award. The purpose of TOPS is to financially assist any Louisiana student who has met the criteria for an award and has enrolled in an institution in the state for the purpose of pursuing a postsecondary education. The components of TOPS are the Opportunity Award, the Performance Award, the Honors Award and the Teachers Award. Each component shall be addressed in a separate chapter of this manual.

B. Legislative Authority

The TOPS was created by Act 476 of the 1997 Regular Session of the Louisiana Legislature. The Act created Chapter 20-G of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:3048.1 and 3048.2.

C. Effective Date

Although Act 476 became effective on August 15, 1997, the monetary awards authorized under TOPS may only be made for the first time beginning with the 1998-99 academic year.

D. Special Provisions

1. **Applicability.** With the exception of students applying for the TOPS-Teacher Award, the following provisions are only applicable to students who graduated during the period August 15, 1996, to August 15, 1997, from a high school approved by the Louisiana Board of Elementary and Secondary Education (BESE). These emergency rules do not apply to students graduating from approved high schools after these inclusive dates.

2. **Student Eligibility.** With the exception of the TOPS-Teacher Award, TOPS awards are authorized for the first time beginning in August 1998, which is the acknowledged beginning of the 1998-99 academic year. Students must establish their eligibility for TOPS, enroll in an eligible postsecondary institution and be awarded no later than the beginning of the fourth semester (or equivalent period for schools using quarters or other terms) following the date of their graduation from high school. Accordingly, only those students who graduated from approved high schools after August 15, 1996, will be eligible for TOPS. Students graduating before that date, may be eligible to apply for the TOPS-Teacher Award.

a. TOPS-Opportunity Award

i. Students who will not be first-time freshmen in academic year 1998-99 (meaning they have previously attended a postsecondary institution) must apply during the 1997 special application period (see Paragraph D4a, Special Application Periods and Application Deadlines) and establish continuing eligibility in 1998 by showing evidence of a college grade point average that meets the continuation requirement for this program. (See the Glossary, page G-7 for the grade requirement for continuation in this program).

ii. Students who will be first time freshmen in academic year 1998-99 must apply during the regular application period for 1998 (January 1, 1998 to June 1, 1998), and be awarded and accept funds no later than the 1999 spring term, or lose their eligibility for the program.

b. TOPS-Honors Award

i. Students who will not be first-time freshmen in academic year 1998-99 (meaning they have previously attended a postsecondary institution) must apply during the 1998 regular application period (January 1, 1998 to June 1, 1998) and show evidence of having achieved a cumulative grade point average of at least 3.00 on all college course work.

ii. Students who will be first-time freshmen in academic year 1998-99 (meaning they have not previously attended a postsecondary institution) must apply during the 1998 regular application period and be awarded and accept funds no later than the 1999 spring semester, or lose their eligibility for the program.

c. TOPS-Teacher Award is authorized to be awarded during the 1997-98 academic year. Unlike the other TOPS components, students who will be enrolled as college undergraduates (freshmen through college seniors) in academic year 1997-98 may apply for this award. Students applying for the 1997-98 academic year must apply during the 1997 special application period. (See Paragraph D4b, Special Application Periods and Application Deadlines). In addition to the special provisions referred to in this Chapter, applicants for this award must meet the requirements specified in Chapter IX, adopted as emergency rules on August 12, 1997. Since the 1997 special application period will close after the 1997-98 academic year has begun, students who are selected for a Teacher Award should not expect to receive funds prior to the spring semester, 1998. Beginning in academic year 1998-99, students may accept other TOPS awards in conjunction with the Teacher Award.

3. Establishing Eligibility

To establish eligibility for an award under TOPS, students must meet the criteria specific to the individual awards which are depicted on the chart, page G-7 of the Glossary, and the following:

- i. be a U.S. Citizen or National and be registered with the Selective Service if required to do so by law; and
- ii. be a resident of Louisiana, meaning any person who has actually resided in Louisiana continuously during the 24 months immediately preceding enrollment in an eligible postsecondary institution, and who has a domiciliary parent or guardian in Louisiana who has manifested intent to remain in this state by establishing Louisiana as legal domicile as demonstrated by compliance with all of the following:
 - (a) if registered to vote, is registered to vote in Louisiana;
 - (b) if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license;
 - (c) if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle; and
 - (d) if earning an income, has complied with state income tax laws and regulations.
- iii. be a graduate of a public or nonpublic high school which has been approved, provisionally approved, or probationally approved by the Louisiana Board of Elementary and Secondary Education (BESE);
- iv. annually, complete and submit the Free Application for Federal Student Aid (FAFSA), and authorize the state of Louisiana to receive application results from the federal processor of the form;
- v. meet standards for admission to the desired postsecondary institution and successfully complete 16.5 units of high school course work, constituting the following core curriculum:

UNITS	COURSE
1	English I
1	English II
1	English III
1	English IV
1	Algebra I
1	Algebra II
1	Geometry, Trigonometry, Calculus, or Comparable Advanced Math
1	Biology I
1	Chemistry I
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, or Physics
1	American History
1	World History, World Culture, Western Civilization, or World Geography

1	Civics and/or Economics/Free Enterprise
1	Fine Arts Survey (or substitute 2 units performance courses in Music, Dance and/or Theater; or 2 units of Studio Art; or one elective from among the other subjects listed in this core curriculum)
2	In the same Foreign Language
½	Computer Science, Computer Literacy or Data Processing (or substitute at least ½ unit of an elective from among the other subjects listed in this core curriculum)

vi. except for misdemeanor traffic violations, shall not have a criminal conviction.

4. Special Application Periods and Application Deadlines. Special application periods are hereby established for the TOPS-Opportunity Award and the TOPS-Teacher Award. The special application period for the TOPS-Opportunity Award is intended to permit students who will not be first-time freshmen in academic year 1998-99, to establish their eligibility for the award during the current year and, by showing evidence of having met the program's continuation requirements, receive the award during the 1998-99 academic year. Since the TOPS-Teacher Award is authorized to be funded for the current academic year, the special application period for the Teacher Award is intended to assure that all interested students who will be college undergraduates in academic year 1997-98 are afforded the opportunity to compete for these awards.

a. Students who graduated from an approved high school on or after August 15, 1996 and through June 1997, and who enroll in a postsecondary institution during the 1997-98 academic year, must apply for the TOPS-Opportunity Award by completing and mailing the Free Application for Federal Student Aid (FAFSA), School Year 1997-98, or the Renewal FAFSA for the same year, whichever may be applicable to the student, by December 15, 1997, to be received at the address on the FAFSA's mailing envelope by December 31, 1997. Students who have previously submitted the FAFSA for 1997-98 shall be considered and should not resubmit this form.

b. Students who will be college undergraduates during the 1997-98 academic year and who are pursuing a program which leads to regular certification as a teacher may apply for the TOPS-Teacher Award by completing and mailing the Free Application for Federal Student Aid (FAFSA), School Year 1997-98, or the Renewal FAFSA for the same year, whichever may be applicable to the student, by November 1, 1997, to be received at the address on the FAFSA's mailing envelope by November 15, 1997. Students who have previously submitted the FAFSA for 1997-98 shall be considered and should not resubmit this form.

Jack L. Guinn
Executive Director

9709#012

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)—Teachers Award

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act to adopt rules for the Tuition Opportunity Program for Students (TOPS)—Teachers Award.

Act 476 of the 1997 Regular Legislative Session creates the Tuition Opportunity Program for Students (TOPS)—Teachers Award and affects the welfare of students who may be eligible for the program. A delay in promulgating rules to address student eligibility would disrupt the lives of affected students and adversely impact their financial condition and that of their families. The agency has, therefore, determined that these emergency rules are necessary in order to prevent imminent peril to the welfare of the affected students.

The rule is effective August 15, 1997, and will remain in effect for 120 days or until adoption of the final rule, whichever occurs first.

TOPS—TEACHERS AWARD

A. Program Description, History and Purpose. The Tuition Opportunity Program for Students (TOPS)—Teachers Award was created to attract academically talented high school graduates into the elementary and secondary level teaching profession and to encourage these individuals to practice their profession in Louisiana. The program provides competitively awarded educational loans to residents of Louisiana who indicate their willingness to teach at the elementary or secondary level in Louisiana. When the recipient teaches at an approved institution in Louisiana, the loans are forgiven in the ratio of one year of loan forgiveness for each year of teaching, or two years of loan forgiveness for each year of teaching in an elementary or secondary school which is located in an economically disadvantaged region of the state. The loans are made in the amount of \$6,000 per award year for math and chemistry majors and \$4,000 per year for all other approved majors.

B. Legislative Authority. The TOPS—Teachers Award was created by Act 476, of the 1997 Regular Session of the Louisiana Legislature. This bill amended and reenacted R.S. 17:3042.1(A)(3) and (4), (B), (C), and (D) and 3042.2(A) and (B), reenacted R.S. 17:3042.1(A)(5) and (6) and 3042.8 and renamed Chapter 20-B of Title 17 of the Louisiana Revised Statutes of 1950.

C. Student Applicants

1. Initial Eligibility. To establish initial eligibility, the student must meet all of the following criteria:

- a. be a U.S. citizen or National, and registered with the Selective Service, if required; and
- b. be a resident of Louisiana, as defined for recipients of the Tuition Assistance Plan on page G-5 of the Scholarship and Grant Policy and Procedure Manual; and

c. submit the completed Free Application for Federal Student Aid (FAFSA); and

d. have graduated or will graduate from a public or nonpublic high school that has been approved, provisionally-approved, or probationally-approved by the Louisiana Board of Elementary and Secondary Education (BESE); and

e. have graduated with a cumulative high school grade point average of at least 3.25 calculated on a 4.00 scale for all courses completed in grades 9 through 12; and

f. have attained a composite score on American College Test (ACT) or the Scholastic Aptitude Test (SAT) which is, or is equivalent to at least 23 on the 1990 version of the American College Test; and

g. have successfully completed 16.5 units of high school course work constituting a core curriculum as follows:

UNITS	COURSE
1	English I
1	English II
1	English III
1	English IV
1	Algebra I
1	Algebra II
1	Geometry, Trigonometry, Calculus, or Comparable Advanced Math
1	Biology I
1	Chemistry I
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, or Physics
1	American History
1	World History, World Culture, Western Civilization, or World Geography
1	Civics and/or Economics/Free Enterprise
1	Fine Arts Survey (or substitute 2 units performance courses in Music, Dance and/or Theater; or 2 units of Studio Art; or one elective from among the other subjects listed in this core curriculum)
2	In the same Foreign Language
1/2	Computer Science, Computer Literacy or Data Processing (or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum)

h. if by the end of June in the year of application, will have completed 24 or more hours of graded college credit, have at least a 3.25 cumulative college grade point average based on a 4.00 scale; and

i. enroll as an undergraduate student during the fall term at an eligible college or university; and

j. complete and submit such additional materials as may be required by LASFAC; and

k. be in compliance with the terms of other federal and state aid programs which the applicant may be in receipt of and which are administered by LASFAC; and

l. not have a criminal conviction, except for misdemeanor traffic violations; and

m. agree that proceeds, if received, will be used for educational expenses; and

n. enroll full time in a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level in math or chemistry. LASFAC may require confirmation from the dean of the College of Education or head of the Department of Education at the college or university attended, or from officials of the Louisiana Department of Education; and

o. complete a promissory note approved by the attorney general.

2. Initial Selection Criteria. To be selected for award:

a. applicants meeting the criteria in Section C.1 are assigned a merit score determined by formula. Merit score formulas are defined in the Glossary, page G-5 of the Scholarship and Grant Policy and Procedure Manual;

b. applicants' merit scores are ranked in descending order, with the applicant with the highest merit score ranked first;

c. the number of applicants selected for award is dependent upon the amount of award funds available;

d. prior to the receipt of award funds, applicants must have completed a Teacher Award Program Master Promissory Note.

3. Renewal Eligibility. Annual continuing eligibility is based upon the availability of funds and meeting all of the following requirements:

a. have received less than four years or eight semesters of funding; and

b. not be on academic probation as determined by the college or university attended; and

c. maintain a cumulative college Grade Point Average (GPA) of at least 3.00 calculated on a 4.00 scale at the end of each academic year; and

d. continue to enroll each subsequent semester or quarter as a full-time undergraduate student, unless granted an exception for cause, in a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level; or

e. enter a program approved by the State Board of Elementary and Secondary Education which leads to a degree in education or to regular certification as a teacher as soon as sufficient credits have been earned to do so; and

f. complete and submit such materials as may be required by the LASFAC, including a promissory note; and

g. annually apply for federal student aid; and

h. have no criminal convictions, except for misdemeanor traffic violations; and

i. be in compliance with the terms of all other federal and state aid programs which the student may be in receipt of and which are administered by LASFAC.

4. Academic Suspension of Awards and Reinstatement.

A student who is placed on academic probation by the college or university attended and/or who fails to achieve the required grade point average is not eligible to receive renewal funding under the provisions of Sections 3.b or c above. The student may be returned to eligible status if:

a. the period of suspension did not persist for more than two years from the date of loss of eligibility; and

b. LASFAC is in receipt of:

i. student request for reinstatement; and

ii. institutional verification that the student:

(a) has been removed from academic probation by the college or university attended and is in good academic standing; and

(b) has regained a cumulative college grade point average of 3.00 based on a 4.00 scale; and

(c) is continuing to pursue initial teacher certification; and

iii. sufficient funding to award the reinstated student after funding all continuing recipients who have not been suspended from funding.

5. Annual Award Amounts

a. Students enrolled in a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level in a major other than math or chemistry will receive awards of \$4,000 per year, in two equal disbursements of \$2,000 each.

b. Students enrolled in a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level in math or chemistry will receive awards of \$6,000 per year, in two equal disbursements of \$3,000 each.

c. Students may not receive other aid which, together with award of the Teacher Award, would exceed the students' total cost of attendance as determined by the institution in accordance with regulations implementing federal Title IV student aid.

6. Discharge of Obligation. The loan obligation may be discharged by teaching fulfillment, monetary repayment or cancellation.

a. Teaching Fulfillment. Fulfillment is accomplished by:

i. within two years of the initial teacher certification, perform service as a full-time classroom teacher in a Board of Elementary and Secondary Education (BESE)-approved, provisionally-approved, or probationally-approved elementary or secondary school.

ii. each period of teaching of one-half year or more will fulfill an equivalent period of funding (one semester). However, if teaching in an elementary or secondary school which is located in an economically disadvantaged region of the state, as defined by BESE, one year of teaching will fulfill two years of funding.

iii. the first semester of full-time teaching will fulfill the earliest dated disbursement not previously paid under Subsection b, the second semester the next earliest dated disbursement, and continuing until all disbursements have been fulfilled.

iv. teaching to meet fulfillment requirements shall be completed within six years of completion of the initial teacher certification.

b. Monetary Repayment. Recipients who elect not to discharge the obligation by Teaching Fulfillment and who are not eligible for discharge by cancellation must repay the loan principal plus accrued interest.

i. Interest will accrue on the outstanding principal at the rate of 8 percent per year.

ii. Interest on each disbursement will accrue from the date of said disbursement until lump sum repayment or until capitalized when the recipient enters repayment status.

iii. Repayment Status. The recipient enters repayment status the first of the month following:

(a) determination by LASFAC that the recipient cannot complete fulfillment by teaching;

(b) notification of LASFAC by the recipient that monetary repayment is desired;

(c) six months after LASFAC determines that the recipient is no longer pursuing a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary school level.

iv. Annual repayment amount will be the greater of:

(a) the amount necessary to repay the capitalized amount within 10 years; or

(b) \$1,200 per year or the unpaid balance.

v. Recipients in repayment status may have their payments deferred for the following reasons:

(a) Parental Leave

(i) Definition. The student/recipient must be pregnant or caring for a newborn or newly-adopted child.

(ii) Certification Requirements. Certification by a written statement from a doctor of medicine who is legally authorized to practice or an authorized official of the adoption agency.

(iii) Acceptable Documentation. Includes dates of required leave of absence, the number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, and the required treatment.

(iv) Filing Requirements. The recipient must request by letter, with the required certification and documentation, within 60 days after the occurrence of the qualifying event.

(v) Maximum Length of Deferment. Up to one academic year.

(b) Rehabilitation Program

(i) Definition. The recipient must be receiving rehabilitation in a program administered by a licensed rehabilitation center under a written individualized plan with specific dates of beginning and ending services.

(ii) Certification Requirements. Certification by a rehabilitation counselor or doctor of medicine.

(iii) Acceptable Documentation. Includes dates of the required leave of absence, the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, and the required treatment.

(iv) Filing Requirements. The recipient must file a written request, with the required certification and documentation, within 60 days after occurrence of the qualifying treatment.

(v) Maximum Length of Deferment. Up to two academic years.

(c) Temporary Disability of Recipient, Child, Parent, or Spouse

(i) Definition. Temporary total disability of recipient or recipient's child, parent or spouse of whom recipient is primary care giver,

(ii) Certification Requirements. Certification by a qualified physician.

(iii) Acceptable Documentation. Includes dates of the required leave, the length of the recovery or disability period, the beginning and ending dates of the doctor's care, and the required treatment.

(iv) Filing Requirements. The recipient must file a written request with the required certification and documentation no earlier than 30 days but within 60 days after the occurrence of disability.

(v) Maximum Length of Deferment. A deferment under this Subsection for temporary disability of the maker shall not exceed 36 months. A deferment under this Subsection for temporary disability of any other person shall not exceed 12 months.

(d) Military Service, Peace Corps, National Service Corps, VISTA

(i) Definition. The recipient is called on active duty status with the United States Armed Forces or is performing emergency state service with the National Guard or is serving in the Peace Corps, National Service Corps or VISTA.

(ii) Certification Requirements. Certified by a written statement from the commanding officer or regional supervisor or certified military orders.

(iii) Acceptable Documentation. Includes dates of required leave of absence, the semester(s) or number of days involved, the length of duty (beginning and ending dates).

(iv) Filing Requirements. The student/recipient must file a written request with the required certification and documentation, within 60 days after receipt of military orders or letter of appointment.

(v) Maximum Length of Deferment. Up to the length of the required service period.

(e) Recipient is engaging in a full-time course of study at an institution of higher education at the baccalaureate level or higher. A deferment under this Subsection shall not exceed 36 months; or

(f) Recipient is:

(i) seeking and unable to find full-time employment for a single period not to exceed 12 months; or

(ii) seeking and unable to find full-time employment at a qualifying Louisiana school for a period of time not to exceed 27 months; or

(g) Teaching full time as per Subsection a above.

vi. During the period of time a recipient is in deferment status, a recipient is not required to make repayments and interest does not accrue.

vii. The period of time for completion of repayment will be extended by a period of time equal to the length of time the recipient is in deferment status.

c. Cancellation. Upon submission of applicable proof, teacher loans may be canceled for the following:

- i. death of the recipient;
- ii. complete and permanent disability of the recipient which precludes the recipient from gainful employment.

D. High Schools

1. Only graduates of Louisiana BESE-approved, probationally-approved, and probationally-approved public or nonpublic high schools are authorized to participate in the Teacher Award.

2. Participating high schools must complete and return the certification listing of applicants to LASFAC by the deadline specified.

E. College and Universities

1. Those institutions offering degree programs or courses of study leading to a degree in education or an alternative program leading to certification as a teacher at the elementary or secondary level that are:

- a. Louisiana public colleges and universities, or
- b. regionally accredited independent colleges and universities that are members of the Louisiana Association of Independent Colleges and Universities (LAICU).

2. College and university responsibilities include:

a. certification of student status. Upon request by LASFAC, the institution will verify the following:

- i. admission, and if appropriate, full-time enrollment; and
- ii. eligibility for, or enrollment in, a course of study leading to initial teacher certification;
- iii. enrollment in math or chemistry as major while pursuing teacher certification.

b. Disbursement of Funds. Upon receipt of award checks the institution will:

- i. determine that the recipient is enrolled full time, in an approved degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level;
- ii. if designated as math or chemistry recipient, verify enrollment in course of study leading to certification as a math or chemistry teacher;
- iii. release the award check to the recipient as instructed by LASFAC.

c. Reporting of Academic Data. At the conclusion of each academic year, the institution will complete and return to LASFAC, the College Academic Grade Report, including:

- i. academic year and cumulative hours earned;
- ii. cumulative grade point average;
- iii. major;
- iv. upon graduation, degree date and degree program.

F. Louisiana Department of Education. The responsibilities of the Louisiana Department of Education include verification of:

1. eligibility of teacher education programs;
2. award of teacher certification.

* * *

Amend the Glossary of the Scholarship/grant Policy and Procedure Manual by definition of Merit Ranking Formula to read as follows:

Merit Ranking Formula. A formula incorporating selected merit factors which is used to rank eligible applicants in the priority by which competitive scholarships are to be awarded. The following formulas for the merit ranking of scholarship applicants provide for the equating of scores for high school graduating seniors and college students:

Formula I. Utilized for applicants with less than 24 hours of graded college credit.

$$\frac{\text{HSGPA}}{4.00} \times 60 + \frac{\text{ACT}}{36} \times 40 = \text{MERIT SCORE}$$

Formula II. Utilized for applicants with 24 or more hours of graded college credit.

$$\frac{\text{COLLEGE GPA}}{4.00} \times 95 + \frac{\text{COLLEGE LEVEL}}{4} \times 5 = \text{MERIT SCORE}$$

Formula III. Utilized for applicants for the TOPS—Teacher Award

For those applicants majoring in math or chemistry, an additional 10 points is added to the merit score determined by Formula I or II, resulting in an adjusted merit score.

Jack L. Guinn
Executive Director

9709#013

DECLARATION OF EMERGENCY

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

Eligibility of Aliens

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts 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. 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. Adoption of this rule on an emergency basis is necessary to avoid sanctions or penalties from the federal government arising from failure to adopt appropriate regulations related to the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193).

The Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) significantly changed Medicaid eligibility for individuals who are not citizens of the United States. Medicaid must be provided to eligible citizens or

nationals, but certain noncitizens may be eligible to receive only treatment for an emergency medical condition. This emergency rule adopts the mandatory provisions of P.L. 104-193 and states the options chosen by the state. This emergency rule addresses only the citizenship requirement: every applicant for Medicaid under any classification addressed in this emergency rule must meet all requirements for eligibility. Previous regulations for Medicaid eligibility of lawful permanent residents and aliens Permanently Residing in the United States Under Color of Law (PRUCOL) no longer apply and are replaced by this emergency rule. A previous emergency rule effective January 1, 1997, redefined and replaced all definitions and categories of alien groups (*Louisiana Register*, Volume 23, Number 1, page 24). The following emergency rule will continue the provisions of the corresponding emergency rule in force.

All noncitizens are classified as qualified aliens or nonqualified aliens (which includes illegal aliens). Nonqualified aliens are eligible only for emergency services. Some specifically defined qualified aliens are eligible for regular Medicaid benefits. Those qualified aliens who are not eligible for regular Medicaid benefits are eligible only for emergency services.

In general, aliens who are refugees, asylees, or whose deportation is being withheld are eligible for consideration of Medicaid eligibility until five years after the date of entry into the United States, regardless of when they enter the country, and veterans and those on active duty in the armed services and their families.

Mandatory qualified alien groups eligible for regular Medicaid benefits are:

1. aliens receiving Medicaid on August 22, 1996 (until January 1, 1997);
2. aliens receiving SSI (until SSA notifies Medicaid that SSI benefits have stopped);
3. qualified aliens who were in the United States prior to August 22, 1996, who are members of these groups, whether or not receiving Medicaid on that date and meet any of these criteria:
 - a. lawful permanent residents to whom 40 qualifying quarters of Social Security can be credited;
 - b. refugees until five years after the date of the alien's entry into the United States;
 - c. asylees until five years after the grant of asylum;
 - d. aliens who have had deportation withheld under Section 243(h) of the INA until five years after the grant of withholding; and
 - e. honorably discharged veterans and aliens on active duty in the United States armed forces, and the spouse or dependent child(ren) of such individuals;
4. qualified aliens entering the United States on or after August 22, 1996, who are members of the groups below:
 - a. refugees for five years from date of entry;
 - b. asylees for five years from date of entry;
 - c. aliens whose deportation has been withheld under Section 423(h) of the INA for five years from grant of withholding;
 - d. veterans and aliens on active duty in the United States' armed forces, and the spouse or dependent child(ren) of such individuals;

5. American Indians born in Canada who have at least 50 percent Indian blood who enter and reside in the United States.

The state has determined that the following optional groups of qualified aliens are not eligible for regular Medicaid services under this emergency rule, but may be eligible for emergency services if they meet all eligibility criteria other than citizenship:

1. aliens receiving Medicaid benefits on August 22, 1996, but not receiving SSI, are not eligible January 1, 1997 and afterward.

2. aliens who were in the United States prior to August 22, 1996, who are included in the definition of *qualified alien*, but not included in the mandatory group of qualified aliens living in the United States before August 22, 1996 are not eligible for Medicaid.

Definitions

Illegal Aliens either were never legally admitted to the United States for any period of time, or were admitted for a limited period of time and did not leave the United States when their period of time expired. Illegal aliens are eligible only for emergency services if they meet all eligibility criteria other than citizenship.

Ineligible Aliens are aliens lawfully admitted to the United States but only for a temporary or specified period of time as legal nonimmigrants. Ineligible aliens are eligible only for emergency services if they meet all eligibility criteria other than citizenship. The following categories of individuals are ineligible aliens:

1. foreign government representatives on official business and their families and servants;
2. visitors for business or pleasure, including exchange visitors;
3. aliens in travel status while traveling directly through the U.S.;
4. crewmen on shore leave;
5. treaty traders and investors and their families;
6. foreign students;
7. international organization representation and personnel and their families and servants;
8. temporary workers including agricultural contract workers; and
9. members of foreign press, radio, film, or other information media and their families.

Qualified Aliens are eligible for regular Medicaid if they also meet additional criteria described above for mandatory Medicaid eligibility, or are eligible only for emergency services if they do not. An alien must meet all eligibility requirements for Medicaid other than citizenship to receive either regular Medicaid eligibility or emergency services. Qualified aliens are aliens who are:

1. lawful permanent residents;
 2. refugees;
 3. asylees;
 4. aliens who have had deportation withheld under Section 243(h) of the Immigration and Nationality Act (INA);
 5. aliens granted parole for at least one year by the INS;
- or

6. aliens granted conditional entry under immigration law in effect before April 1, 1980.

Emergency Medical Services are not related to either an organ transplant procedure or routine prenatal or post-partum care. The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

Effective May 1, 1997, an emergency rule was published redefining the above provisions of categories of eligible aliens (*Louisiana Register* Volume 23, Number 4). Therefore, this current emergency rule continues the provisions of the May 1997 emergency in force.

Emergency Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 401 of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) regarding Medicaid eligibility for noncitizens. The following optional groups of qualified aliens are not eligible for regular Medicaid services under this emergency rule, but may be eligible for emergency services if they meet all eligibility criteria other than citizenship:

1. aliens receiving Medicaid benefits on August 22, 1996, but not receiving SSI, are not eligible January 1, 1997 and afterward;

2. aliens who were in the United States prior to August 22, 1996, who are included in the definition of qualified alien, but not included in the mandatory group of qualified aliens living in the United States before August 22, 1996 are not eligible for Medicaid.

Bobby P. Jindal
Secretary

9709#064

DECLARATION OF EMERGENCY

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

Nursing Homes—Emergency Preparedness Plan

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule 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 until adoption of the final rule, whichever occurs first.

The department maintains minimum licensing requirements for the operation of all nursing homes in the state (*Louisiana Register*, Volume 13, Number 4). The purpose of the nursing

home licensing law and requirements is to provide for the development, establishment, and enforcement of standards of care for individuals in nursing homes and for the construction, maintenance, and operation of nursing homes which will promote safe and adequate treatment of nursing home residents. The department has now determined that it is necessary to amend the minimum licensure standards to require nursing homes to maintain a written emergency preparedness plan that describes the procedures to be followed in the event of an emergency such as a hurricane or flood. The emergency preparedness plan shall include the following procedures for:

(1) the evacuation of residents to a safe place either within the nursing home or to another location;

(2) the delivery of essential care and services whether residents are housed off-site or when additional residents are brought into a nursing home during an emergency;

(3) the provisions for the management of staff, including distribution and assignment of responsibilities and functions either within the nursing home or at another location;

(4) a plan for coordinating transportation services required for evacuating residents to another location; and

(5) assurance that the resident's family or sponsor is notified if the resident is evacuated to another location.

The plan shall be developed in coordination with the local/parish Office of Emergency Preparedness utilizing community-wide resources. These provisions were established and published in a subsequent emergency rule. (*Louisiana Register*, Volume 23, Number 6).

Emergency Rule

Effective October 7, 1997, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations to require all licensed nursing homes to have a written emergency preparedness plan designed to manage the consequences of a natural disaster or other emergency that disrupts the home's ability to provide care and treatment or threatens the lives or safety of the residents. The nursing home's emergency preparedness plan must conform to the Office of Emergency Preparedness' Model Plan.

Emergency Preparedness Plan

A. As a minimum, written emergency preparedness plan shall address the following:

1. the evacuation of residents to a safe place either within the nursing home or to another location;

2. the delivery of essential care and services to when either residents are evacuated off-site or additional residents are evacuated to the nursing home during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing home or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location; and

5. a method to assure that the resident's family or sponsor is notified if the resident is evacuated to another location.

B. The nursing home's plan shall be implemented at least annually, either in response to an emergency or in a planned drill. The nursing home's performance during

implementations of the plan shall be evaluated, documented, and the plan changed where indicated.

C. The nursing home's plan shall be reviewed and approved by the local/parish office of emergency preparedness, utilizing community-wide resources.

D. The plan shall be available to representatives of the Office of State Fire Marshal as well as DHH personnel.

Bobby P. Jindal
Secretary

9709#063

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Regulation 63—Prohibition on the Use of Medical Information and Genetic Test Results

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Department of Insurance has adopted an emergency regulation in order that it might be implemented without delay and allow the statutory provisions of Act 1418 of the 1997 Regular Session of the Louisiana Legislature to take effect, without causing imminent peril to the health and safety of the residents of the state who could otherwise be denied access to health insurance coverage.

Emergency rulemaking is necessary to establish the statutory prohibitions on the use of medical information, including pregnancy tests, genetic tests and related genetic test information by health insurers, third-party administrators, and insurance agents. This emergency regulation is effective September 8, 1997, and shall remain in effect for the maximum period of time allowed by state law.

Emergency Rule

Section 1. Purpose

The purpose of this regulation is to establish the statutory prohibitions on the use of medical information including pregnancy tests, genetic tests and related genetic test information by health insurers, third-party administrators, and insurance agents.

Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner of Insurance under the Administrative Procedure Act and R.S. 22:3, 22:10, 22:2014, 22:2002(7), 22:214(22) and (23), 22:213.6, and 22:213.7 of the *Insurance Code*.

Section 3. Definitions

Collection—obtaining a DNA sample or samples for the purpose of determining inherited or individual characteristics that can be utilized to predict the development of medical conditions in the future. *Collection* shall not mean diagnostic or medical treatment information about an existing medical condition or the prior medical condition of a person applying for or being covered by a health benefit plan.

Compulsory Disclosure—any disclosure of genetic information mandated or required by federal or state law in

connection with a judicial, legislative, or administrative proceeding.

DNA—deoxyribonucleic acid including mitochondrial DNA, complementary DNA, as well as any DNA derived from ribonucleic acid (RNA). *DNA* shall not mean any medical procedure or test utilized in the practice of medicine for the purpose of diagnosing or treating a medical illness or health related condition.

Disclose—to convey or to provide access to genetic information to a person other than the individual.

Family—includes an individual's blood relatives and any legal relatives, including a spouse or adopted child, who may have a material interest in the genetic information of the individual. For purposes of providing individual or group health care coverage, the term *family* shall not be used to prevent the collection of reasonable medical information about individuals applying for health insurance coverage to perform medical underwriting based on existing or past medical conditions of those persons being insured.

Family History/Pedigree—the medical history of blood relatives of an individual that is used to predict the possibility of developing a medical condition in the future. The term shall not include the medical history of an insured or applicant for coverage under a health benefit plan.

Genetic Analysis—the process of characterizing genetic information from a human tissue sample and does not include the performance of medical tests, including but not limited to blood tests, in the diagnosis or treatment of a medical condition.

Genetic Characteristic—any gene or chromosome, or alteration thereof, that is scientifically or medically believed to cause a disease, disorder, or syndrome, or to be associated with a statistically significant increased risk of development of a disease, disorder or syndrome.

Genetic Information—all information about genes, gene products, inherited characteristics, or family history/pedigree that is expressed in common language. *Genetic information* does not include the medical history of an individual insured or applicant for health care coverage.

Genetic Test—any test for determining the presence or absence of genetic characteristics in an individual, including tests of nucleic acids, such as DNA, RNA, and mitochondrial DNA, chromosomes, or proteins in order to diagnose or identify a genetic characteristic. The determination of a genetic characteristic shall not include any diagnosis of the presence of disease, disability, or other existing medical condition.

Health Benefit Plan—any health insurance policy, plan, or health maintenance organization subscriber agreement issued for delivery in this state under a valid certificate of authority and does not include life, disability income, or long-term care insurance.

Individual—the source of a human tissue sample from which a DNA sample is extracted or genetic information is characterized.

Individual Identifier—a name, address, social security number, health insurance identification number, or similar information by which the identity of an individual can be determined with reasonable accuracy, either directly or by reference to other available information. Such term does not

include characters, numbers, or codes assigned to an individual or a DNA sample that cannot singly be used to identify an individual.

Insurer—any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, health and accident insurance policy, or any other insurance contract of this type, including a group insurance plan, or any policy of group, family group, blanket, or franchise health and accident insurance, a self-insurance plan, health maintenance organization, and preferred provider organization, including insurance agents and third-party administrators, which delivers or issues for delivery in this state an insurance policy or plan. The term *insurer* does not include any individual or entity that does not hold a valid certificate of authority to issue, for delivery in this state, an insurance policy or plan. A certificate of authority to issue an insurance policy or plan for delivery shall not include a license or certificate to act as a preferred provider organization, insurance agent, or third-party administrator.

Person—all persons other than the individual or authorized agent acting on behalf of the individual, who is the source of a tissue sample and shall include a family, corporation, partnership, association, joint venture, government, governmental subdivision or agency, and any other legal or commercial entity. The term shall not include any licensed insurance agent acting on behalf of the individual to complete and submit health insurance application documents required to apply for coverage under a health policy or plan.

Research—scientific investigation that includes systematic development and testing of hypotheses for the purpose of increasing knowledge.

Storage—retention of a DNA sample or of genetic information for an extended period of time after the initial testing process. The term does not include medical history information about insureds or persons applying for coverage under a health benefit plan.

Section 4. Applicability and Scope

Except as otherwise specifically provided, the requirements of this regulation apply to all issuers of health care policies or contracts of insurance, or health maintenance organization subscriber agreements issued for delivery in the state of Louisiana. The requirements of this regulation shall not impinge upon the normal practice of medicine or reasonable medical evaluation of an individual's medical history for the purpose of providing or maintaining health insurance coverage. The requirements of this regulation address the use of medical information, including use of genetic tests, and genetic information for the purpose of issuing, renewing, or establishing premiums for health coverage. The provisions of this regulation do not apply to any actions of an insurer or third parties dealing with an insurer taken in the ordinary course of business in connection with the sale, issuance or administration of a life, disability income, or long-term care insurance policy.

Section 5. Prohibitions on the Use of Pregnancy Test Results

Any insurer shall be authorized to request medical information that verifies the pregnancy of an insured or individual applying for coverage under a health benefit plan.

The results of any prenatal test, other than the determination of pregnancy, shall not be used as the basis to:

1. terminate, restrict, limit, or otherwise apply conditions to the coverage under the policy or plan, or restrict the sale of the policy or plan in force;
2. cancel or refuse to renew the coverage under the policy or plan in force;
3. deny coverage or exclude an individual or family member from coverage under the policy or plan in force;
4. impose a rider that excludes coverage for certain benefits or services under the policy or plan in force;
5. establish differentials in premium rates or cost sharing for coverage under the policy or plan in force;
6. otherwise discriminate against an insured individual or insured family member in the provision of insurance.

Section 6. Requirements for Release of Genetic Test and Related Medical Information

A. A general authorization for the release of medical records or medical information shall not be construed as an authorization for disclosure of genetic information. No insurer shall seek to obtain genetic information from an insured or applicant or from a DNA sample, without first obtaining written informed consent from the individual or authorized representative. To be valid, an authorization to disclose the results of a genetic test shall:

1. be in writing, signed by the individual and dated on the date of such signature;
2. identify the person permitted to make the disclosure;
3. describe the specific genetic information to be disclosed;
4. identify the person to whom the information is to be disclosed;
5. describe with specificity the purpose for which the disclosure is being made;
6. state the date upon which the authorization will expire, which in no event shall be more than 60 days after the date of the authorization;
7. include a statement that the authorization is subject to revocation at any time before the disclosure is actually made or the individual is made aware of the details of the genetic information;
8. include a statement that the authorization shall be invalid if used for any purpose other than the described purpose for which the disclosure is made.

B. A copy of the authorization shall be provided to the individual. An individual may revoke or amend the authorization in whole or in part, at any time. In complying with the provisions of this Section, the record holder is responsible for assuring only authorized information is released to insurers with respect to medical records that contain genetic information. The requirements of this Section shall not act to impede or otherwise impinge upon the ability of the patient's attending physician to provide appropriate and medically necessary treatment or diagnosis of a medical condition.

Section 7. Prohibitions on the Use of Medical Information and Genetic Test Results

A. Any insurer shall be authorized to make reasonable requests for medical history information regarding an insured

or individual applying for coverage under a health benefit plan. A reasonable request shall in no instance include a requirement to identify every medical practitioner an individual has ever utilized during his/her lifetime and release of any medical records that may exist. To be considered reasonable, requests must be limited to specific treatment information regarding existing conditions under treatment or conditions that have been treated within the past five years. The use of a medical information questionnaire in conjunction with applying for health coverage shall be allowed provided information is limited to the medical conditions of those persons being offered or considered for coverage under the plan.

B. No insurer shall require an applicant for coverage under a policy or plan, or an individual or family member who is presently covered under a policy or plan, to be the subject of a genetic test, release genetic test information, or to be subjected to questions relating to the medical conditions of persons not being insured under such policy or plan.

C. All insurers shall, in the application or enrollment information required to be provided by the insurer to each applicant concerning a policy or plan, include a written statement disclosing the rights of the applicant. Such statements shall be printed in 10-point type or greater with a heading in all capital letters that states: YOUR RIGHTS REGARDING THE RELEASE AND USE OF GENETIC INFORMATION. Disclosure statements must be approved by the Department of Insurance as complying with the requirements of R.S.22:213.7 prior to utilization.

D. The results of any genetic test, including genetic test information, shall not be used as the basis to:

1. terminate, restrict, limit, or otherwise apply conditions to the coverage of an individual or family member under the policy or plan, or restrict the sale of the policy or plan to an individual or family member;
2. cancel or refuse to renew the coverage of an individual or family member under the policy or plan;
3. deny coverage or exclude an individual or family member from coverage under the policy or plan.
4. impose a rider that excludes coverage for certain benefits or services under the policy or plan;
5. establish differentials in premium rates or cost sharing for coverage under the policy or plan;
6. otherwise discriminate against an individual or family member in the provision of insurance.

Section 8. General Provisions

A. The requirements of this Section shall not apply to the genetic information obtained:

1. by a state, parish, municipal, or federal law enforcement agency for the purposes of establishing the identity of a person in the course of a criminal investigation or prosecution;
2. to determine paternity;
3. to determine the identity of deceased individuals;
4. for anonymous research where the identity of the subject will not be released;

5. pursuant to newborn screening requirements established by state or federal law;

6. as authorized by federal law for the identification of persons;

7. by the Department of Social Services or by a court having juvenile jurisdiction as set forth in *Children's Code* Article 302 for the purposes of child protection investigations or neglect proceedings.

B. An applicant/insured's genetic information is the property of the applicant/insured. No person shall retain genetic information without first obtaining authorization from the applicant/insured or a duly authorized representative, unless retention is:

1. for the purposes of a criminal or death investigation or criminal or juvenile proceeding;
2. to determine paternity.

C. The standards of accrediting bodies, professional associations, and federal agencies shall not be considered in determining negligence or willful disclosure of genetic test results, or genetic information. For purposes of R.S. 22:213.7, any person who acts without proper authorization to collect a DNA sample for analysis, or willfully discloses genetic information without obtaining permission from the individual or patient as required under this regulation, shall be liable to the individual for each such violation in an amount equal to:

1. any actual damages sustained as a result of the unauthorized collection, storage, analysis, or disclosure, or \$50,000, whichever is greater;
2. treble damages, in any case where such a violation resulted in profit or monetary gain;
3. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action to enforce any liability under R.S. 22:213.7.

D. Any person who, through a request, the use of persuasion, under threat, or under a promise of a reward, willfully induces another to collect, store or analyze a DNA sample in violation; or willfully collects, stores, or analyzes a DNA sample; or willfully discloses genetic information in violation of R.S. 22:213.7 shall be liable to the individual for each such violation in an amount equal to:

1. any actual damages sustained as a result of the collection, analysis, or disclosure, or \$100,000, whichever is greater;
2. the costs of the action together with reasonable attorney fees as determined by the court, in the case of a successful action under R.S. 22:213.7.

E. The discrimination against an insured in the issuance, payment of benefits, withholding of coverage, cancellation, or nonrenewal of a policy, contract, plan or program based upon the results of a pregnancy or genetic test or receipt of genetic information shall be treated as an unfair or deceptive act or practice in the business of insurance under R.S. 22:1214.

James H. "Jim" Brown
Commissioner of Insurance

9709#037

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Gaming Control Board

Hearings and Appeals (LAC 42:III.108 and 114)

In accordance with the provisions of R.S. 49:953, the Gaming Control Board hereby determines that adoption of emergency rules relative to procedures for administrative hearings and appeals to the board is necessary and that for the following reasons failure to adopt rules on an emergency basis will result in imminent peril to the public health, safety and welfare.

Act 7 of the First Extraordinary Session of 1996, effective May 1, 1996, created the Gaming Control Board with all regulatory authority, control and jurisdiction, including investigation, licensing and enforcement, and all power incidental or necessary to such regulatory authority, control and jurisdiction over all aspects of gaming activities and operations as authorized pursuant to the provisions of the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act, and the Video Draw Poker Devices Control Law.

Numerous licensing actions and enforcement actions are required to be initiated by the board and it is necessary that rules be adopted providing for administrative hearings to ensure due process is afforded applicants, licensees and permittees.

R.S. 27:25 was amended during the 1997 Regular Session specifically with regard to time periods for hearing officers rendering decisions, for appeals to the board and time periods for decisions of the board.

For the foregoing reasons, the Gaming Control Board has determined adoption of emergency rules is necessary and hereby adopts these emergency rules, amending LAC 42:III.108 and adding LAC 42:III.114, effective August 11, 1997, in accordance with R.S. 49:953(B), and effective for 120 days or until the final rule is promulgated, whichever occurs first.

Title 42

LOUISIANA GAMING

Part III. Gaming Control Board

Chapter 1. General Provisions

§108. Board Hearings

A. Any person against whom an administrative action is proposed, and any person against whom an enforcement action is taken, may request a hearing by filing a written request with the board. The request shall be filed within 10 days of the date of receipt of the certified mailing or personal service of the notice of proposed action or within 10 days of the date the enforcement action is taken. All hearings shall be conducted in accordance with this Section.

* * *

E. The record shall be considered received by the hearing officer for the purposes of R.S. 27:25 (B)(3) only upon receipt of the transcript of the hearing, all briefs either requested or allowed by the hearing officer, and all evidence which the

hearing officer orders be made part of the record after the hearing.

F. All briefs submitted to the hearing officer or to the board shall be on 8½" x 11" paper and shall not exceed 15 pages unless approved by the hearing officer or chairman. No less than 10-point and 12-character-per-inch typeface shall be used. A margin of at least 1 inch at the top and bottom of each page shall be maintained. Footnotes may be single spaced but shall not be used to circumvent the spirit of this rule.

G.1. All motions, briefs, requests for discovery and any other pleading filed with the board shall be served on the adverse party on the same day, either by mailing or delivering a copy thereof to the adverse party at his last known address or to his counsel of record.

2. Where service is made by mail or delivery, the party or counsel making the service shall file in the record a certificate of the manner in which service was made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Safety and Corrections, Gaming Control Board, LR 23:77 (January 1997), amended LR 23:

§114. Appeals to the Board

Appeals to the board shall be decided on the record. Briefs shall be submitted only if allowed by the board at the written request of the party. The appeal may be assigned and scheduled for oral argument on request of the parties at the discretion of the board. In the event briefs are filed and/or the appeal scheduled for oral argument, the time period required for the board to render a decision shall be 60 days after the receipt of all briefs or the date of the oral argument, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

Hillary J. Crain
Chairman

9709#006

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Office of State Police

Out-of-State Inspection
Stations (LAC 55.III.808)

In accordance with R.S. 47:463(A)(2), the Department of Public Safety and Corrections, Office of State Police is exercising the provisions of the Administrative Procedure Act to adopt an emergency rule pertaining to the implementation of the 1997 Regular Session amendments to R.S. 32:1301 and R.S. 32:1305 authorizing the establishment of motor vehicle inspection stations by any business owning more than 40 motor vehicles registered pursuant to the International Registration Plan in Louisiana and operating at least one

vehicle repair and maintenance shop. The 1997 amendment authorizes the establishment of such inspection stations within or without the state of Louisiana. This emergency rule is to become effective September 10, 1997 and shall remain in effect for 120 days.

The Department of Public Safety has determined that failure to adopt these rules as emergency rules would present a threat to the public welfare and to the public safety of the state of Louisiana and its citizens. If these emergency rules are not adopted, fleet operators who currently register their motor vehicles in Louisiana could change the registrations of their fleet vehicles to another state in which they have garage facilities, and thus the revenue Louisiana generates from these registrations would be lost. Additionally, these motor vehicles may be registered in a state which does not have inspection requirements, with the result that safety of Louisiana motorists could be threatened by the operation of motor vehicles which are not inspected pursuant to Louisiana law.

As a result of the above finding, the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, hereby adopts the following emergency rule:

Title 55

PUBLIC SAFETY

Part III. Motor Vehicles

Chapter 8. Vehicle Inspection

Subchapter D. Appointment as an Inspection Station

§808. Out-of-State Inspection Stations

A. All inspections of motor vehicles registered in Louisiana pursuant to the International Registration Plan, if conducted outside the state of Louisiana, shall be conducted during the months of October, November, and December.

B. All inspection reports shall be received by the Safety Enforcement Section no later than January 31 of the year following the date the motor vehicle was inspected at the out-of-state inspection station. The reports shall be mailed to the Office of State Police, Safety Enforcement Section at Post Office Box 66614, Baton Rouge, Louisiana 70896; or hand delivered at the Safety Enforcement Section headquarters at 265 S. Foster Drive, Baton Rouge, Louisiana 70806.

C. Prior to issuing a certificate of appointment authorizing an out-of-state inspection station, the applicant shall provide the full name, telephone number (including area code), complete mailing and physical addresses of two contact persons. One contact person shall be located inside the state of Louisiana, and one contact person shall be located at the site of the out-of-state inspection station.

D. All mechanic inspectors shall be trained in Louisiana by a safety enforcement officer.

E. All inspection certificates shall be mailed directly to the mailing address of the contact person located at the out-of-state inspection station.

F. It shall be the responsibility of the contact person located at the out-of-state inspection station, upon receipt of the inspections certificates, to notify the Safety Enforcement Section of the receipt of the inspection certificates. The contact person shall verify the audit numbers of the certificates received and include a statement of this verification in the notice to the Safety Enforcement Section

required in this Subsection. The notification required by this Subsection shall be in writing, but may be sent by facsimile to the Safety Enforcement Section headquarters in Baton Rouge, LA. If the notice required by this Subsection is sent by facsimile, the person shall contact headquarters to verify the telephone number for receiving facsimiles prior to sending the facsimile.

G. The inspection log books shall be sent to the applicant's Louisiana contact, who shall have the responsibility of forwarding the log books to the out-of-state inspection station.

H. All lost or stolen inspection stickers shall be reported to the Safety Enforcement Section and to a law enforcement agency having criminal jurisdiction over the location of the out-of-state inspection station. The notice required by this Subsection shall be in writing and shall be sent to the Safety Enforcement Section headquarters in Baton Rouge, LA. The Safety Enforcement Section headquarters shall also be provided, by the out-of-state contact person, with a copy of the police report completed by a commissioned member of the agency contacted regarding the loss or theft of the inspection stickers.

I. Each out-of-state inspection station shall only purchase the number of stickers needed to inspect the number of commercial motor vehicles registered in Louisiana that use that location. The inspection stickers are sold in books of 25. Each out-of-state inspection station may purchase an additional 10 percent of its projected allotment to account for fluctuations in fleet numbers. The allotment for each out-of-state inspection station shall be determined by the Safety Enforcement Section based on information provided by the applicant. Any requests for additional stickers shall be in writing and shall include an explanation as to why additional stickers are needed. Inspection stickers issued to one out-of-state inspection station shall not be transferred or assigned to another inspection station without prior written approval by the Safety Enforcement Section. The request for such approval shall be in writing and shall state the reasons for requesting such transfer or reassignment of stickers. If such transfer or reassignment is approved, all inspection stations involved in such transfer or reassignment of stickers shall maintain detailed records so as to provide a clear audit trail for the stickers.

J. Each out-of-state inspection station shall place inspection reports in numerical order prior to submitting the reports to the Safety Enforcement Section headquarters in Baton Rouge, LA. All inspection stickers shall be accounted for, and any missing inspection stickers shall be documented by the lost or stolen report required in this Section. Any inspection sticker remaining unused at the end of the calendar year shall be destroyed or returned to the Safety Enforcement Section. In either case, a record of the disposition of the remaining stickers shall be submitted to the Safety Enforcement Section.

K. All out-of-state inspection stations are subject to unannounced inspection of their facilities by safety enforcement officers between 8 a.m. central time and 4:30 p.m. central time. All out-of-state inspection station employees shall cooperate fully with the Safety Enforcement Section personnel conducting the inspection. All out-of-state

inspection stations are subject to inspections at other times if the station is in operation at the time of the safety enforcement inspection. All records relating to motor vehicle inspections located at the out-of-state inspection station shall be made available immediately upon request by personnel of the Safety Enforcement Section. All such records are subject to seizure in connection with such investigation, unless the safety enforcement officer in charge of the inspection determines that accurate and acceptable copies can be obtained. The applicant shall have the burden of providing such copies.

L. All personnel assigned to the Safety Enforcement Section are authorized to conduct, or assist in the conduct of, any investigation of an out-of-state inspection station. The deputy secretary of the Department of Public Safety and Corrections, Public Safety Services may assign personnel from other offices, divisions, or sections of the department to conduct, or assist in the conduct of, any investigation, and any such personnel shall have the same authority as personnel of the Safety Enforcement Section. Safety enforcement officers may conduct an investigation of any complaint concerning the condition of any motor vehicle inspected by an out-of-state inspection station. Any complaint arising from a motor vehicle condition report, an accident report from any law enforcement agency located inside or outside Louisiana, or written complaint from a member of the public may be investigated by personnel of the Safety Enforcement Section.

M. All out-of-state inspection stations shall adhere to all Louisiana laws governing the Motor Vehicle Inspection Program, as well as all rules and regulations in the most current *Motor Vehicle Inspection Manual*. It is the responsibility of the permittee to maintain a current manual at any inspection station and to make all inspectors aware of the contents of the manual.

N. The operator, as well as each appointed out-of-state inspection station, shall comply with all orders issued by the Safety Enforcement Section or its personnel or any other employee of the department acting under the direction of the deputy secretary of the department, as provided in this Section.

O. Any violation of any rule regarding motor vehicle inspections, any statute regarding motor vehicle inspections, or any order issued by, or on behalf of, the Safety Enforcement Section may serve as grounds to initiate an administrative proceeding to impose a sanction. The sanctions which may be imposed as a result of an administrative proceeding include the suspension, revocation, or cancellation of any or all certificates of appointment authorizing the operation of an inspection station or stations, or the imposition of a fine or other penalty, as is appropriate in each case.

P. The Safety Enforcement Section may impose conditions, restrictions, or limitations on any permit without regard to whether any violation has occurred.

Q. The Safety Enforcement Section, any employee of the Safety Enforcement Section, or any employee of the department assigned by the deputy secretary to assist the Safety Enforcement Section, may issue written orders to any inspection station or permittee in connection with the enforcement of the motor vehicle inspection statutes or rules.

Any order issued in connection with an onsite inspection is effective immediately, whether or not the order is in writing. The permittee may seek a hearing to review any order, but any order issued in connection with an onsite inspection is not automatically stayed by the submission of a hearing request.

R. The operator, as well as any employee of the operator participating in any violation of these rules, the state statute regarding motor vehicle inspections, or any order by or on behalf of the Safety Enforcement Section, are subject to the administrative penalties of this Section.

S. Any business entity domiciled in Louisiana, or any foreign business entity authorized to do business in Louisiana, already permitted to operate a fleet inspection station or whose commercial vehicles are registered in Louisiana and who wishes to operate an out-of-state inspection station shall make a written request to the Office of State Police, Safety Enforcement Section, Box 66614, Baton Rouge, LA 70896.

T. All applications for a certificate of appointment to operate an out-of-state inspection station and for a mechanic inspector at such out-of-state inspection station shall be subject to an investigation of the background of the applicant. The background investigation shall consist of a review of the same requirements as are contained in §807 for appointment of inspection stations and approval of mechanic inspectors, except that a mechanic inspector need only possess the appropriate class driver's license for the type of vehicle he inspects, issued from the state in which he resides or works. The Safety Enforcement Section shall maintain a list of all applicants for certificates of appointments to operate inspection stations and all applicants seeking to be mechanic inspectors at an inspection station. The listing shall indicate those persons and entities which have been approved and those persons and entities which have not been approved.

U.1. The operator shall be responsible for the reimbursement of the actual costs incurred by the department in administering the out-of-state inspection program. The costs shall include the expenses incurred for travel, meals, lodging, and other related expenses incurred in connection with the application for a certificate of appointment, the initial inspection in connection with commencement of operation of the out-of-state inspection station, and any subsequent inspection or investigation of the out-of-state inspection station to insure all requirements of state statutes, the rules regarding motor vehicle inspections, any order issued by or on behalf of the Safety Enforcement Section are met.

2. The travel expenses incurred in connection with any out-of-state travel shall comply with the travel policies established by the Division of Administration in the Governor's Office. The manner in which travel to the site of an out-of-state inspection station is accomplished shall be at the sole discretion of the department, subject to the policies of the Division of Administration.

V. The provisions of §807 govern all aspects of regulation of out-of-state inspection stations including applications for appointment or approval, training, inspection requirements, and reporting requirements, except as expressly provided in this Section and except in the instance of conflict between the provisions of §807 and §808, in which case the provisions of §808 shall apply.

W. Only those inspection stations which qualify as fleet stations are eligible for appointment as out-of-state inspection stations, except that the fleet must consist of at least 40 motor vehicles registered in Louisiana pursuant to the International Registration Plan.

X. Any request for an administrative hearing shall be made, in writing, to the Safety Enforcement Section headquarters at Post Office Box 66614, Baton Rouge, LA, 70896 within 30 days of the date of the issuance of the notice of administrative action on a violation, the date of issuance of an order issued by or on behalf of the Safety Enforcement Section, or the date of issuance of any other action of the Safety Enforcement Section.

Y. Unless specified otherwise, in writing, and except as provided above, a request for an administrative hearing shall stay the enforcement of any action or order of the Safety Enforcement Section.

Z. Any person seeking a declaratory order or ruling regarding the application or interpretation of any statute or rule, as it may apply to motor vehicle inspections or regarding the validity of any rule as it may apply to motor vehicle inspections, shall make such request in writing. Any request for a declaratory order or ruling shall be mailed to the Safety Enforcement Section at Post Office Box 66614, Baton Rouge, LA 70896. Such request shall be typed, printed, or written legibly and shall include the full name, mailing address, physical address, and daytime telephone number of the person making the request. Such request shall include citations to legal authorities the person believes to be relevant to the issue or which the person wishes to be considered in connection with such declaratory order or ruling. If the matter over which the person seeking the declaratory order or ruling involves a person(s) other than the one making the request, then the person requesting the order or ruling shall notify the involved person(s) by certified mail, return receipt requested, prior to submitting the request to Safety Enforcement. The failure to comply with these requirements shall be grounds to refuse to render an order or ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1301 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 23:

Thomas H. Normile
Undersecretary

9709#072

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
Office of State Police**

**Weights and Standards Mobile Police
Force (LAC 55:I.2101 and 2103)**

In accordance with R.S. 47:463(A)(2), the Department of Public Safety and Corrections, Office of State Police is exercising the provisions of the Administrative Procedure Act to adopt an emergency rule pertaining to the civil enforcement

of the weights and standards law by the State Police Weights and Standards Mobile Police Force. This emergency rule is effective August 22, 1997 and shall remain in effect for 120 days.

The Weights and Standards Mobile Police Force was transferred from the Department of Transportation and Development to the Department of Public Safety, Office of State Police in the 1997 Regular Session of the Legislature. This transfer became effective August 15, 1997. However, no provisions were made for the civil enforcement of each area of the law which this police force is required to regulate. The inability of the Weights and Standards Mobile Police Force to issue civil citations would severely curtail enforcement, resulting in their inability to effectively control the size, weight, and load limits of vehicles in transportation.

Any unnecessary delay in the promulgation of these rules would thus have an adverse impact on the physical conditions of the highways of this state.

As a result of the above finding, the Department of Public Safety and Corrections, Office of State Police hereby adopts the following emergency rule, effective August 22, 1997, implementing R.S. 36:408 and other recently amended statutes:

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 21. Weights and Standards

§2101. Weights and Standards Mobile Police Force

The Weights and Standards Mobile Police Force, a section of the Office of State Police, shall enforce the provisions of R.S. 32:380 through 389; R.S. 47:718 and the provisions of Chapter 4 of Subtitle II of Title 47 relating to trucks, trailers, and semitrailers; Part V of Chapter 7 of Subtitle of Title 47 of the Louisiana Revised Statutes of 1950; and the department's regulations adopted pursuant thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:408.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 23:

§2103. Civil Penalties

Any person who is determined by the Department of Public Safety and Corrections, through its Weights and Standards Mobile Police Force, after reasonable notice and opportunity for a hearing held in accordance with the Administrative Procedure Act, to have committed an act that is a violation of the statutes listed in §2101 of this Chapter or regulations adopted in this Chapter, is subject to a civil penalty, including but not limited to, a monetary penalty, a warning, suspension or revocation of his or her operator's license and/or license plate, or seizure of the vehicle if the vehicle is registered out of state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:408.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Public Safety Services, Office of State Police, LR 23:

Thomas H. Normile
Undersecretary

9709#003

DECLARATION OF EMERGENCY

Department of Transportation and Development Office of the Secretary Crescent City Connection Division

Greater New Orleans Mississippi River Bridge Number 2 Transit Lanes (LAC 70:I.515)

The Department of Transportation and Development, Office of the Secretary, Crescent City Connection Division, in accordance with the Administrative Procedure Act, R.S. 49:953(B), hereby adopts an emergency rule applicable to the transit lanes on the Crescent City Connection Bridge Number 2.

This emergency rule is effective September 20, 1997, and shall remain in effect for the 120 day maximum period allowed or until adoption of a final rule, whichever occurs first.

The secretary of the Department of Transportation and Development has determined that emergency rulemaking is necessary in order to immediately implement R.S. 48:1101.2, which mandates and provides for vehicular traffic over the transit lanes of the Crescent City Connection Bridge Number 2 (the Greater New Orleans Mississippi River Bridge Number 2). The failure to adopt by emergency rule regulations governing the operation of the transit lanes would result in imminent peril to the public safety. Also, the enactment of R.S. 48:1101.2 has created an administrative burden that can only be eliminated through the adoption of an emergency rule to govern traffic flow and permit fees to encourage carpooling. Finally, this emergency action will improve traffic flow during peak periods by allowing use of the transit lanes by vehicular traffic.

The department will propose, through a notice of intent published in a subsequent issue of the *Louisiana Register*, to adopt §515 through the normal administrative rulemaking process in accordance with R.S. 49:950 et seq.

Title 70

TRANSPORTATION AND DEVELOPMENT

Part I. Office of the General Counsel

Chapter 5. Tolls

§515. Crescent City Connection—Transit Lanes

A. Intent. It is the intent of this rule to efficiently maximize the use of the vehicular traffic lanes of the Crescent City Connection for the increased mobility of individuals and goods across the Mississippi River at New Orleans, to encourage and promote mass transit and transportation such as the use of carpools and other High Occupancy Vehicle (HOV) use, while minimizing transportation related fuel consumption and air pollution, and to provide for one-way reversible traffic flow on the transit lanes of the Crescent City Connection Bridge Number 2, and the establishment of the occupancy and permit fee requirements for vehicles operating on the transit lanes.

B. Hours of Operation

1. The transit lanes of the Crescent City Connection Bridge Number 2 will be open for use by eligible vehicles in accordance with the control signals posted by the Crescent

City Connection Division through the Crescent City Connection Police.

2. Generally, the transit lanes of the Crescent City Connection Bridge Number 2 will be open for use by eligible vehicles with the traffic proceeding to the Eastbank in the morning and with the traffic proceeding to the Westbank in the afternoon.

3. However, the directional traffic flow of the transit lanes may be reconfigured by the Crescent City Connection Division in its sole discretion at such times and in such directions in order to protect the public safety during emergencies and to accommodate the public interest during special events.

C. Ineligible Vehicles. The objective of the transit lanes is to provide a free flowing facility for mass transit and other high occupancy vehicles. Accordingly, the following vehicles are prohibited from using the transit lanes during the hours of operation even though they may satisfy the vehicle occupancy requirements:

1. vehicles with less than two axles or four wheels;
2. trucks with more than two axles or having a gross weight capacity of one ton or more;
3. vehicles towing trailers;
4. parades;
5. funeral processions;
6. pedestrians;
7. bicycles; and
8. nonmotorized vehicles.

D. Eligible Vehicles. The following vehicles are eligible to use the transit lanes during the hours of operation:

1. all public mass transit vehicles, including Regional Transit Authority buses and Jefferson Transit System buses;
2. school buses;
3. commercial passenger vehicles manufactured to carry seven or more passengers and prequalified to use the transit lanes (HOV-7); and
4. other motor vehicles carrying more than a specified number of persons and properly displaying a valid permit emblem issued by the Crescent City Connection Division (HOV-2).

E. Vehicle Occupancy Requirements. The minimum occupancy requirement for vehicles designated as HOV-2 shall be two or more persons during all hours of operation. The minimum occupancy requirement for vehicles designated as HOV-7 shall continue to be seven or more persons during all hours of operation.

F. Qualifications and Permits

1. Eligible vehicles meeting the vehicle occupancy requirements must be prequalified or prepermitted to use the transit lanes as follows:

a. Public Mass Transit Vehicles. All public mass transit vehicles shall continue to be prequalified to access the transit lanes toll-free during the hours of operation.

b. School Buses. All school buses shall continue to be authorized to access the transit lanes toll-free during the hours of operation upon compliance with the school buses exemption provided for under LAC 70:I.509.E.

c. HOV-7+. Eligible vehicles meeting the minimum occupancy requirement of seven or more persons must obtain

a permit emblem from the Crescent City Connection Division by registering and providing proof of:

- i. current vehicle registration with the state of Louisiana or other jurisdiction;
- ii. current and valid driver's license; and
- iii. current and fully-paid liability insurance coverage.

d. HOV-2+. Eligible vehicles meeting the minimum occupancy requirement of two or more persons must purchase an annual permit emblem from the Crescent City Connection Division for \$100. The permit emblem will allow eligible vehicles meeting the minimum occupancy requirement unlimited access over the transit lanes during the hours of operation for a period of 12 months. The permit emblem is freely transferrable to accommodate carpooling, ridesharing and multiple vehicles. However, lost, stolen, or mutilated permit emblems will not be replaced or refunded by the Crescent City Connection Division.

2. The permit emblems for HOV-7 and HOV-2 vehicles must be conspicuously displayed in accordance with the instructions of the Crescent City Connection Division at all times while operating on the transit lanes.

G. Enforcement. During all hours of operation, the Crescent Connection Police shall supervise and actively control access to the transit lanes, and enforce vehicle eligibility, minimum occupancy requirements and permit emblem display.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq. and R.S. 48:1101.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, Crescent City Connection Division, LR 23:

Frank M. Denton
Secretary

9709#044

DECLARATION OF EMERGENCY

Department of Transportation and Development Office of the Secretary Crescent City Connection Division

Sunshine Bridge Toll—Student Exemptions (LAC 70:I.517)

The Department of Transportation and Development, Office of the Secretary, Crescent City Connection Division, in accordance with the Administrative Procedure Act, R.S. 49:953(B), hereby adopts an emergency rule applicable to free passage for students on the Sunshine Bridge.

This emergency rule is effective September 20, 1997, and shall remain in effect for the 120 day maximum period allowed or until adoption of a final rule, whichever occurs first.

The secretary of the Department of Transportation and Development has determined that emergency rulemaking is necessary in order to immediately implement R.S. 17:157(C),

which mandates and provides for the right of free passage over the Sunshine Bridge for all elementary and secondary students and all other students who are operating a vehicle in their passage to and from school between the hours of 6:30 a.m. and 9:30 p.m. The failure to adopt, by emergency rule, regulations governing the right of free passage for students would result in imminent peril to the public safety. Also, the enactment of R.S. 17:157(C) has created an administrative burden that can only be eliminated through the adoption of an emergency rule to govern the right of free passage during expanded hours. Finally, this emergency action will improve traffic flow by allowing for student free passage.

The department will propose, through a notice of intent published in a subsequent issue of the *Louisiana Register*, to adopt §517 through the normal administrative rulemaking process in accordance with R.S. 49:950 et seq.

Title 70

TRANSPORTATION AND DEVELOPMENT

Part I. Office of the General Counsel

Chapter 5. Tolls

§517. Sunshine Bridge—Toll Exemptions—Students

A. General. In addition to free passage of students in clearly marked school buses, any motorized vehicle carrying an elementary and secondary student in their passage to and from school between the hours of 6:30 a.m. and 9:30 p.m. and any motorized vehicle operated by any other student in his or her passage to and from school between the hours of 6:30 a.m. and 9:30 p.m., shall have free passage over the Sunshine Bridge.

B. Registration

1. Students who are majors, or in the case of a minor student, the legal parent or guardian, shall register with the Sunshine Bridge for each student for each school year, and shall certify as to the following:

- a. the address of the student's domicile;
- b. the name and address of the school attended by the student;
- c. the student regularly traverses the Sunshine Bridge in his or her passage to and from school;
- d. the geographic location of the school in relation to the student's domicile requires travel across the Sunshine Bridge.

2. The appropriate school official, the registrar of the college or university attended by the student, or the principal, headmaster, or administrator of the school attended by the student, shall certify on the registration form as to the enrollment of the student at the school and the length of the school year.

C. Vehicle Passes

1. Upon approval of a registration, the Sunshine Bridge shall issue vehicle passes for use by the student.

2. The vehicle passes shall be for the benefit of the student, in his or her passage to and from school between the hours of 6:30 a.m. and 9:30 p.m., and are not transferable.

3. The vehicle passes shall not be used for any other purpose than crossing the Sunshine Bridge for required attendance at school.

- 4. Lost, stolen, or damaged passes will not be replaced.
- D. Loss of Privilege. Any prohibited use of student vehicle passes will result in the loss of the privilege to obtain and use passes and/or actions provided by law.
- E. School Buses—Requirements for Exemption
 - 1. Free passage across the Sunshine Bridge shall be granted to all clearly marked school buses at any time, upon the bus driver's delivery of a free passage coupon at the bridge toll plaza.
 - 2. Free passage coupons for school buses shall be obtained by signed registration of the official school system's transportation coordinator to the Sunshine Bridge. The school system's transportation coordinator is responsible for distributing the free passage coupons to eligible school bus drivers for their school system.
 - 3. Official school systems, for purposes of §517, are parish public school systems, private schools operating in the state of Louisiana, and parochial schools operating in the state of Louisiana.
 - 4. Bus drivers who privately own their clearly marked school buses are eligible for individual registration with the Sunshine Bridge for free passage coupons. These bus drivers must attach an original letter from the school system they serve to their signed registration. The letter must certify that their bus serves the school system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:25 et seq. and R.S. 17:157(C).

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of the Secretary, Crescent City Connection Division, LR 23:

Frank M. Denton
Secretary

9709#010

DECLARATION OF EMERGENCY

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

Plan Document—Sleep Disorders

Pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees hereby invokes the emergency rule provisions of R.S. 49:953(B) to adopt amendments to the Plan Document of Benefits.

This emergency rule is effective August 14, 1997, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

The board finds that it is necessary to amend provisions of the Plan Document to limit benefits for the treatment of sleep disorders. Failure to adopt these amendments on an emergency basis will adversely affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents which are crucial to

the delivery of vital services to the citizens of the state. Accordingly, the Plan Document of Benefits for the State Employees Group Benefits Program is hereby amended in the following particulars: amend Article 3, Section VIII, Subsection OO, to read as follows:

VIII. Exceptions and Exclusions for All Medical Benefits
No benefits are provided under this contract for:

* * *

OO. Testing for sleep disorders, except when such tests are performed at a facility accredited by the American Sleep Disorders Association and interpreted by a physician certified by the American Sleep Disorders Association; benefits otherwise payable are provided for nonsurgical treatment of sleep disorders, but no benefits are provided under any circumstances for sleep studies conducted in a patient's home, nor for surgical treatment of sleep disorders, including LAUP, except following demonstrated failure of nonsurgical treatment and only upon specific case-by-case approval by the Program;

James R. Plaisance
Executive Director

9709#007

DECLARATION OF EMERGENCY

**Department of the Treasury
Board of Trustees of the State
Employees' Retirement System**

Emergency Refunds (LAC 58:I.1301 and 1305)

Pursuant to the authority granted by R.S. 11:515, vesting the Board of Trustees with the responsibility for administration of the Louisiana State Employees' Retirement System (LASERS) and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees and the executive director hereby invoke the emergency rule provisions of R.S. 49:953(B), amending the rules regarding procedures for the emergency refund of employee contributions.

The board finds it necessary to amend these rules to effect an orderly transition to new refund procedures. Failure to adopt these emergency rules could impair the ability to timely refund persons in need of an emergency refund of contributions. The emergency rules take effect immediately and shall remain in effect 120 days or until adopted through the normal promulgation process, whichever occurs first.

Title 58

RETIREMENT

**Part I. Louisiana State Employees'
Retirement System (LASERS)**

Chapter 13. Emergency Refunds

§1301. Conditions Giving Rise to an Emergency Refund

A. A refund of accumulated employee contributions may be made in less than 30 calendar days after the date of separation from state service in the following situations:

- 1. the refund results from the death of the member; or

2. the member has significant expenses for medical care for himself, spouse, or child; or

3. an emergency situation of the member, which shall consist of the foreclosure on a member's domicile, repossession of the member's vehicle, or eviction of the member from his or her apartment.

B. The member shall provide a written request detailing the emergency situation, and the executive director shall approve or disapprove the request based on this written request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:537(B).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 21:373 (May 1996), amended LR 23:

§1305. Responsibility for Overpayment of a Refund

If the amount that is refunded is greater than the amount actually due the individual, the agency paying the contributions shall be responsible for recouping any overpayment from the individual who was overpaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and 11:537(B).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:

James O. Wood
Executive Director

9709#004

DECLARATION OF EMERGENCY

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

Commercial Red Snapper Season

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act; R.S. 49:967, which allows the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons; and R.S. 56:326.3, which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, the Wildlife and Fisheries Commission hereby sets the following seasons for commercial harvest of red snapper in Louisiana state waters:

The season for the commercial fishery for red snapper in Louisiana state waters will open at 12:01 a.m., September 5, 1997.
The commercial fishery for red snapper in Louisiana waters will close at 12 noon September 15, 1997.
The commercial season for red snapper harvest in Louisiana state waters will also reopen at 12 noon on October 1, 1997 and close at 12 noon on October 15, 1997 and thereafter open at 12 noon on the 1st of each month and close at 12 noon on the 15th of each month for each month of 1997, until the remainder of the 1997 commercial quota is harvested.

The commission grants authority to the secretary of the Department of Wildlife and Fisheries to change the closing dates for the commercial red snapper season in Louisiana state waters when he is informed that the commercial red snapper quota for the Gulf of Mexico has been filled or projected to be filled, such closure order shall close the season until the date set for the opening of the 1998 commercial red snapper season in federal waters.

Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen.

Effective with any closure, no person shall commercially harvest, transport, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit; provided however, that fish which were legally taken prior to the closure may be purchased, possessed, transported, and sold by a licensed wholesale/retail dealer if appropriate records in accordance with R.S. 56:306.4 are properly maintained, and those other than wholesale/retail dealers may purchase such fish in excess of the daily bag limit from wholesale/retail dealers for their own use or for sale by a restaurant as prepared fish provided all records required by law are maintained.

Daniel J. Babin
Chairman

9709#031

DECLARATION OF EMERGENCY

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

Deer Importation Prohibition

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of LSA Const. Art. IX §7; LSA 56:6(10), (13) and (15), 56:20, and 56:171 et seq., the Wildlife and Fisheries Commission (LWFC) hereby adopts the following emergency rule:

The importation of white-tailed deer (*Odocoileus virginianus*) into the State of Louisiana is prohibited.

This rule is effective September 4, 1997 and shall remain in effect for 120 days.

The reasons for the promulgation of this declaration of emergency are as follows:

The Louisiana Constitution vests the LWFC with the exclusive "control and supervision of the wildlife of the state." With the passage of Act 461 of the 1995 Legislature, effective August 15, 1995, the Louisiana Department of Agriculture and Forestry (LDAF) was given certain authority to regulate farm-raised white-tailed deer (*Odocoileus virginianus*). Since that time, the Louisiana Department of Wildlife and Fisheries (LDWF) has attempted to cooperate with the LDAF in the formulation of its deer farming rules.

However, the LDAF draft rules have consistently failed to address the LDWF's concerns about impacts on wild deer. On

May 5, 1997, a LDAF emergency rule was promulgated and distributed to Louisiana deer farmers and game breeders, which purported to authorize them to enclose wild deer on the property within deer-proof fences, thereby converting this publicly owned wildlife resource to private property. This provision of the rule is without statutory authority. At present, LWFC statutes and rules at LSA R.S. 56:116.1(B)(6) and LAC 76:V.107.C expressly prohibit the possession of live, wild, white-tailed deer. The LDWF does not permit the commingling of wild white-tailed deer and farm-raised white-tailed deer. The LDWF has concerns that some deer farmers and breeders, possibly acting in reliance on the May 5 LDAF emergency rule, are attempting to import deer for release into enclosures which may also contain wild deer. Since the May 5 emergency rule, there have been two other drafts of the LDAF rules, all of which purport to:

1. allow releasing of pen-reared deer in large enclosures containing wild deer;
2. give some deer farmers property rights over wild deer confined in enclosures;
3. establish special hunting seasons and licenses beyond those established by the Wildlife and Fisheries Commission; and
4. deny LDWF enforcement agents unaccompanied access to deer farmer records.

The LDWF has not concurred with these provisions and has questioned, and continues to question, the legal authority of the LDAF to establish such rules.

The result of this conflict has been an uncertain and confusing regulatory climate. Some individuals, possibly taking advantage of this uncertain climate, have begun to import white-tailed deer for release into enclosures for hunting, breeding, or other purposes. Indications are that importation of white-tailed deer may be increasing. In one instance, and without consulting the LDWF, individuals from Louisiana have proposed to capture wild deer from New York and bring them to Louisiana for release.

Unregulated importation of white-tailed deer into Louisiana poses several threats to the wild deer resources, as well as to human health. Currently, there is no way to independently distinguish wild deer from farm-raised deer in an enclosure or transport vehicle. Therefore, the effective enforcement of laws to protect Louisiana's wild deer is jeopardized. Neither adequate reporting nor record keeping regulations are in place, and the LDAF has not proposed regulations which require that all deer within an enclosure be implanted with microchips as required by law (LSA R.S. 3:3106). There is an increased threat of exposure of wild deer to disease from imported deer. Bovine tuberculosis is found in captive and wild white-tailed deer in some states. Although there are USDA testing requirements for tuberculosis, the current regulatory situation in Louisiana hampers the effective enforcement of testing regulations and results in a regulatory climate whereby circumvention of the testing requirements

can occur. There will be an increased threat to the genetic integrity of the wild deer should large numbers of imported deer be released or escape into the wild. There is currently a great deal of interest among deer breeders in replacing our native white-tailed deer with northern varieties which tend to be larger, but are not as resistant to endemic disease and are not genetically adapted for Louisiana. Under the current regulatory situation there is an increased threat of the covert release of imported deer into the wild for genetic manipulation. Such activities would also increase the potential for disease transmission to wild deer. The uncertain regulatory climate, which has resulted in increased and unregulated deer imports, also poses a potential threat to human health. Imported deer may carry diseases such as tuberculosis or carry the vectors of disease, such as Lyme disease-infected ticks. The deer that were proposed to be imported from New York were from an area with a very high incidence of Lyme disease. In contrast, while Lyme disease occurs in Louisiana, the incidence is currently very low. Lyme disease, as well as other diseases carried by deer or their parasites, can be contracted by humans and is a threat to public health.

In the past, importation of deer into Louisiana was not a significant problem. The public was aware that the LDWF and LWFC regulated the activity, and there was no doubt that LWFC regulations applied to all white-tailed deer activities. Deer that were imported into Louisiana were placed in relatively small deer-proof enclosures and did not come into contact with wild deer. All breeders were licensed by the LDWF, and the LDWF had access to all records and documents. However, the regulatory climate has gone from one where regulatory authority was clearly defined to one that is now uncertain in the eyes of the public. The nature of private deer breeding activities is now generally small scale operations of exhibitors and hobbyists; however the activity being contemplated by LDAF includes large scale breeding and hunting operations.

It is the LDWF's belief that, to many in the public, the current status of regulations concerning captive white-tailed deer is confusing and uncertain. Some may take advantage of this situation to engage in activities that endanger the wild white-tailed deer resources of Louisiana and the public health. Others, without illicit intentions, may act in reliance on the May 5 LDAF emergency rule or subsequent draft rules and discover that they have violated provisions of Title 56 and are subject to prosecution.

For the above reasons, the Wildlife and Fisheries Commission believes that an immediate ban on the importation of white-tailed deer into the state of Louisiana is necessary and that such a ban should remain in effect until such time as the above issues are resolved.

Daniel J. Babin
Chairman

9709#032

DECLARATION OF EMERGENCY

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

Deer Season (Either Sex)—1997-98

(Editor's Note: A portion of the following Emergency Rule, published on page 939 of the August 20, 1997 Louisiana Register, is being republished to correct a typographical error in hunting dates listed for Franklin Parish.)

Either Sex Hunting

"Either sex" hunting in the following areas shall be open:

Parish	Portion Opened	Weapon Type Allowed (Archery, Muzzleloader, Modern Firearm)	Season Dates
Franklin	Entire Parish	All weapon types	Nov 22-23 Nov 28-Nov 30

* * *

Daniel J. Babin
Chairman

9709#015

DECLARATION OF EMERGENCY

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

Fur Harvest Season—1997-98

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and R.S. 49:967(D), the Wildlife and Fisheries Commission is using emergency procedures to set the 1997-98 fur harvest season statewide from November 20, 1997 through March 20, 1998.

Authority to extend or shorten the adopted season by the secretary is hereby authorized by the Wildlife and Fisheries Commission.

Daniel J. Babin
Chairman

9709#029

DECLARATION OF EMERGENCY

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

Waterfowl Seasons—1997-98

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:115, the secretary of the

Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following emergency rule:

The hunting seasons for ducks, coots, and geese during the 1997-98 hunting season shall be as follows:

DUCKS AND COOTS

- West Zone: November 8 - November 30
December 13 - January 18
- East Zone: November 15 - December 14
December 20 - January 18
- Catahoula Lake Zone: November 15 - December 14
December 20 - January 18
- Youth Waterfowl Day: January 24 in all zones

DAILY BAG LIMITS: The daily bag limit on ducks is six and may include no more than four mallards (no more than two of which may be females), three mottled ducks, one black duck, two wood ducks, three pintails, one canvasback, and two redheads. Daily bag limit on coots is 15.

MERGANSERS: The daily bag limit for mergansers is five, only one of which may be a hooded merganser. Merganser limits are in addition to the daily bag limit for ducks.

POSSESSION LIMIT: The possession limit on ducks, coots, and mergansers is twice the daily bag limit.

GEESE: LIGHT GEESE (SNOW AND BLUE)

- Statewide Season: November 8 - February 22

DAILY BAG LIMIT (snow and blue) - 10;
POSSESSION LIMIT (snow and blue) - 30

WHITE-FRONTED (SPECKLE BELLIES)

- November 8 - November 30
December 13 - January 28

DAILY BAG LIMIT (speckle bellies) - two;
POSSESSION LIMIT (speckle bellies) - four.

During the Canada Goose Season (January 20-January 28), the daily bag limit for Canada and white-fronted geese is two, of which not more than one can be a Canada goose. Possession limit is twice the daily bag limit.

CANADA GEESE

Closed in the area described below

- January 20 - January 28

During the Canada Goose Season (January 20-January 28) the daily bag limit for Canada and white-fronted geese is two, of which not more than one can be a Canada goose. Possession limit is twice the daily bag limit.

The Canada Goose Season will be open statewide, except for a portion of southwest Louisiana. The closed area is described as follows:

Beginning at the Texas state line, proceeding east along Highway 82 to the Calcasieu Ship Channel, then north along the Calcasieu Ship Channel to its junction with the Intracoastal Canal, then east along the Intracoastal Canal to its juncture with LA Highway 82, then south along LA Highway 82 to its juncture with Parish Road 3147, then south and east along Parish Road 3147 to Freshwater Bayou Canal, then south to the Gulf of Mexico, then west along the shoreline of the Gulf of Mexico to the Texas state line, then north to the point of beginning at LA Highway 82.

Open waters of Lake Mermentau and the Mermentau River from the Highway 14 bridge southward will also be closed to Canada Goose hunting.

A special permit shall be required to participate in the Canada Goose Season. A permit is required of everyone, regardless of age, and a nonrefundable \$5 administrative fee will be charged. This permit may be obtained from any district office.

Return of harvest information requested on permit is mandatory. Failure to submit this information to the department by February 15, 1998 will result in the hunter not being allowed to participate in the Canada Goose Season the following year.

Shooting Hours: One-half hour before sunrise to sunset.

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits, and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective November 1, 1997 and extend through sunset on March 10, 1998.

Daniel J. Babin
Chairman

9709#030

Rules

RULE

Department of Economic Development Board of Certified Public Accountants

Comprehensive Rule Revisions (LAC 46:XIX.Chapters 1-31)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and of R.S. 37:75, the Board of Certified Public Accountants amends LAC 46:XIX. The amendments are the result of a year of review and study by the board's rules committee. The amendments update the rules in response to changes in the profession of public accounting and the related standards of practice, clarify or improve the grammar of the text, and promulgate as rules certain policies and procedures that have evolved over the years following the last rule revisions which were promulgated in 1991.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIX. Certified Public Accountants

Chapter 1. General Provisions

§101. Definitions

A. The definitions included in the Act are used herein with the following additions which apply to LAC 46:XIX, unless otherwise indicated in following Chapters:

Accountants' Report—a report:

a. rendering any opinion or statement, or denying an opinion, that financial statements or elements thereof are presented, prepared or compiled in accordance with generally accepted accounting principles or any other comprehensive basis of accounting; and/or

b. referring to an audit, examination, review or lack thereof.

The Act—Act 510 of the 1979 Regular Session of the Louisiana Legislature or as it may hereafter be amended.

Board—the State Board of Certified Public Accountants of Louisiana.

Client or Enterprise—any person or entity, whether organized for profit or not, for which a licensee performs professional services.

CPA Examination—the examination required for a certificate as a Certified Public Accountant (CPA).

Firm—a proprietorship, partnership, professional corporation, limited liability company, limited liability partnership, or any other organization or entity which may be authorized by law to engage in the practice of public accountancy.

Generally Accepted Accounting Principles (GAAP)—those standards promulgated by the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) and their predecessor or successor

entities and similar pronouncements issued by other entities having similar generally recognized authority.

Licensee—a person licensed to practice public accounting by the board.

Member—a member of a limited liability company.

Peer Review or Quality Review—a study, appraisal, or review of one or more aspects of the professional work of a CPA or firm of CPAs in the practice of public accountancy by a licensed CPA or firm of licensed CPAs, who are not affiliated with the CPA or CPA firm being reviewed.

Rule—each board statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the board and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the board, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the board. The term includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by the board. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

B. Masculine terms shall include the feminine and, when the context requires, shall include firms.

C. Where the context requires, singular shall include the plural or plural shall include the singular.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, amended LR 6:1 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1112 (September 1997).

§103. Special Definitions; Public Accountancy; Exceptions

A. - B.2. ...

a. The accompanying balance sheet of XYZ Company as of December 31, 19XX and the related statements of income, retained earnings, and cash flows for the year then ended have been compiled by me (us).

b. - c. ...

i. Management has elected to omit substantially all of the disclosures (and the statement of cash flows) required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

3. - 4. ...

C. Practice in Louisiana

Practice in Louisiana—performing or offering to perform those services set forth in R.S. 37:72(A) in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:72.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants January 1974, amended LR 6:1 (January 1980), LR 10:76 (February 1984), LR 11:757 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1112 (September 1997).

§105. Domicile

- A. ...
- B. Delete.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:73.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:1 (January 1980), amended LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997).

Chapter 3. Operating Procedures

§301. Officers

The officers shall be chairman, secretary, and treasurer. The duties of the respective officers shall be the usual duties assigned to the respective office. The newly elected officers shall assume the duties of their respective offices on the first day of the month following the election of the officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997).

§303. Fiscal Year

The fiscal year of the board shall end on June 30 of each year. The annual meeting shall be held as soon as practical after the close of the fiscal year, at which meeting the board shall elect its officers who shall serve until the next annual meeting or until their successors assume their duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997).

§305. Meetings

A. Any meeting may be called by the chairman or by joint call of at least two of its members, to be held at the principal office of the board, or at such other place as may be fixed by the board. Regularly scheduled board meetings are usually held on the last working days of January, April, July and October.

- B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), LR 9:207 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1067 (November 1991), LR 23:1113 (September 1997).

§307. Duties of the Secretary

A. The duties of the secretary include, but are not limited to the following.

1. It shall be the duty of the secretary to determine when the prerequisites and procedures required by the Act and by the board for taking the CPA examination have been satisfactorily completed by an applicant.

2. The secretary shall determine when, in his opinion, the prerequisites and procedures required by the Act and by the board shall have been satisfactorily completed in respect to issuance of certificates and/or licenses and he shall submit at each meeting of the board, for its approval or disapproval, current tabulations thereof, listing the names of the persons concerned.

3. The secretary shall list in the minutes of the board all persons approved for the issuance of certificates and/or licenses and all persons whose certificates and/or licenses are revoked, suspended, or reinstated.

4. It shall be the responsibility of the secretary to see that an official register of all certified public accountants who have received certificates from the board is maintained.

5. It shall be the responsibility of the secretary that an annual listing of all certified public accountants licensed to practice is maintained.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997).

§309. Duties of the Treasurer

The duties of the treasurer include, but are not limited to:

1. responsibility for the maintenance of the accounts of the board and the preparation of a financial report once a year, as of June 30; and

2. submittal of an annual budget to the board for its approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 4:358 (October 1978), amended LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997).

Chapter 5. Rules of Professional Conduct

§500. General

A. Preamble

1. The services usually and customarily performed by those in the public practice of accountancy involve a high degree of skill, education, trust, and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designation, both to their clients and to the public in general. These obligations include maintaining independence of thought and action; continuously improving professional skills; observing, where applicable, generally accepted accounting principles and generally accepted auditing standards; promoting sound and informative financial

reporting; holding the affairs of clients in confidence; upholding the standards of the public accountancy profession; and maintaining high standards of personal and professional conduct in all matters affecting fitness to practice public accountancy.

2. The board has an underlying duty to the public to insure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting the bright, young minds essential for adequately serving the public interest.

3. These Rules of Professional Conduct are intended to have application to all kinds of professional services performed for the public in the practice of public accountancy, including but not limited to services relating to auditing; accounting; review and compilation services; tax services; management advisory and consulting services; and financial planning, and intended to apply as well to all certificate or license holders, whether or not engaged in the practice of public accounting, except where the wording of one of these Rules of Professional Conduct clearly indicates that the applicability is more limited.

4. In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

B. Definitions. The following terms have meanings which are specific to §501.A.

Audit-Sensitive Activities—those activities normally an element of or subject to significant internal accounting controls.

For example, the following positions, which are not intended to be all-inclusive, would normally be considered audit-sensitive, even though not positions of significant influence: a cashier, internal auditor, accounting supervisor, purchasing agent, or inventory warehouse supervisor.

Close Relatives—nondependent children, stepchildren, brothers, sisters, grandparents, parents, parents-in-law, and their respective spouses.

Grandfathered Loans—those loans which were made under normal lending procedures, terms, and requirements by a financial institution before January 1, 1992, and before independence was required with respect to the financial institution. Such loans must not be renegotiated after independence became required and must be kept current as to all terms. Such loans shall be limited to:

- a. loans obtained by the licensee which are not material in relation to the net worth of the borrower; or
- b. home mortgages; or
- c. any other fully secured loan, except one secured solely by a guarantee of the licensee.

Licensee—

- a. the term includes:
 - i. the licensee's firm;
 - ii. the firm's proprietors, partners, shareholders or members;
 - iii. employees or contractors participating in the engagement, except those who perform only routine clerical functions;
 - iv. employees or contractors with a managerial position located in an office participating in a significant portion of the engagement; and

v. entities whose operating, financial, or accounting policies can be controlled by one or more of the persons described in §500.B.4.a.ii. - iv, or by two or more such persons if they choose to act together;

b. the term also includes employees and contractors of the licensee or his firm who provide services to clients and are associated with the client in any capacity described in §501.A.1.b, if the individuals are located in an office participating in a significant portion of the engagement;

c. the term does not include such an individual solely because he was formerly associated with the client in any capacity described in §501.A.1.b, if such individual has disassociated from the client and does not participate in the engagement for the client covering any period of his association with the client;

d. in addition, the term may include the following relatives of the licensee or of the individuals described above: spouses, dependents, descendants, *close relatives*, persons living in a household with the licensee, or a former proprietor, partner, shareholder or member of the licensee's firm. Independence may be affected depending on the nature of the relationships, the employment or *audit-sensitive activities* of the individuals, or on whether the individuals have significant influence over the engagement or the enterprise, as applicable to the circumstances.

Period of Professional Engagement—the period during which professional services are provided, with such period starting when the licensee begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the licensee or by the client.

Permitted Personal Loans—

- a. automobile loans and leases collateralized by the automobile;
- b. loans of the surrender value of an insurance policy;
- c. borrowing fully collateralized by cash deposits at the same institution;
- d. credit cards and cash advances on checking accounts with an aggregate unpaid balance of \$5,000 or less, provided that these are obtained from a financial institution under its normal lending procedures, terms, and requirements and are at all times kept current as to all terms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 and R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997).

§501. Independence, Integrity and Objectivity

A. Independence

1. A licensee shall not issue an accountants' report on the financial statements of an enterprise in such a manner as to imply that he is acting as an independent public accountant with respect thereto, nor shall he perform any other service in which independence is required under professional standards, unless he is independent with respect to such enterprise. Independence shall be considered to be impaired if, for example:

- a. during the period of his professional engagement or at the time of issuing an accountants' report, the licensee:
 - i. - iii. ...

iv. had any loan to or from the enterprise or any officer, director, or principal stockholder thereof other than permitted personal loans and grandfathered loans;

b. during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing an accountants' report, the licensee:

i. - ii. ...

2. The foregoing examples are not intended to be all inclusive.

B. Integrity and Objectivity

1. A licensee in the performance of professional services shall neither knowingly misrepresent facts nor subordinate his judgment to that of others. He shall be objective and shall not place his own financial interests nor the financial interests of a third party ahead of the legitimate financial interests of the client or the public in any context in which the client or the public can reasonably expect objectivity from one using the CPA title.

2. If the licensee uses the CPA title in any way to obtain or maintain a client relationship, the board will presume the reasonable expectation of objectivity.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1114 (September 1997).

§503. Competence and Professional Standards

A. Definition

Professional Standards—include but are not limited to those standards defined by Statements on Auditing Standards (SAS); Statements on Standards for Accounting and Review Services (SSARS); Statements on Standards for Consulting Services (SSCS); Statements on Standards for Attestation Engagements (SSAE); and Standards for Performing and Reporting on Peer Reviews or Quality Reviews issued by the American Institute of Certified Public Accountants; and Governmental Auditing Standards issued by the Comptroller General of the United States.

B. Competence. A licensee shall not undertake any engagement for performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with generally accepted accounting principles, and §503.C.

C. Professional Standards. A licensee shall not act or imply that he is acting as a CPA by permitting association of his name or firm's name, issuing an accountants' report, or expressing an opinion, in connection with financial statements, elements thereof, or the written assertions and representations of a client, or by the performance of professional services, unless he has complied with applicable professional standards. This rule does not apply in any instance in which such compliance would otherwise be prohibited by the Act or by rule of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1115 (September 1997).

§505. Responsibilities to Clients

A.1.a. - b. ...

c. prohibit disclosures in the course of a peer review or quality review of a licensee's professional services; or

d. ...

2. ...

B.1. - 3. ...

4. a copy of the licensee's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client;

5. examples of records described in this Section include but are not limited to computer generated books of original entry, general ledgers, subsidiary ledgers, adjusting, closing and reclassification entries, journal entries and depreciation schedules, or their equivalents.

C. The nonpayment of professional fees and/or out-of-pocket expenses shall not be a basis for failure to furnish the records referred to in §505.B.3, 4 and/or 5. A licensee shall be permitted to collect in advance of issuance a reasonable fee for time and expenses of issuing or reproducing documents referred to in §505.B.1, 2, 4 and 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended LR 4:358 (October 1978), LR 6:2 (January 1980), LR 11:757 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1067 (November 1991), LR 23:1115 (September 1997).

§507. Other Responsibilities and Practices

A. Discreditable Acts. A CPA shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to items listed in R.S. 37:84 and the following:

1. dishonesty, fraud or gross negligence in the practice of public accountancy;

2. suspension or revocation of, or a voluntary consent decree concerning, the right to practice before any state or federal agency for a cause which, in the opinion of the board, warrants its action;

3. knowingly participating in the preparation of a false or misleading financial statement or tax return;

4. fiscal dishonesty or breach of fiduciary responsibility of any type;

5. failure to comply with a final order of any state or federal court;

6. repeated failure to respond to a client's inquiry within a reasonable time without good cause;

7. false communication to the board; or

8. causing a breach in the security of the CPA examination.

B. ...

C. Advertising

1. Licensees shall have a right to advertise. However, a licensee shall not use or participate in the use of any public communication, written or verbal, having reference to professional services performed by the licensee, which contains a false, fraudulent, misleading, deceptive or unfair statement or claim, nor any form of communication having reference to the professional services of the licensee which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious, or harassing conduct. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes but is not limited to a statement or claim which:

a. - b. ...

c. contains any testimonial or laudatory statement, or other statement or implication that the licensee's professional services are of exceptional quality; or

d. - k. ...

2.a. - g. ...

D. Written Advertisements, Solicitations and Other Public Communications

1. ...

a. a licensee shall not mail or deliver any advertisement, solicitation or other public communication if such advertisement, solicitation or other public communication would violate §507.C.

2. ...

E. Form of Practice. A licensee may practice public accountancy only in a proprietorship, a partnership, a limited liability partnership, a limited liability company, a professional corporation organized in accordance with the Louisiana Professional Accounting Corporations Law or similar law of another state, or any other organization or entity which may be authorized by law.

F. Firm Name

1. The name under which a licensee practices public accounting must indicate clearly whether he is an individual practicing in his own name or a named member of a firm. If the name includes the designation "and Company" or "and Associates" or "Group" or abbreviations thereof, there must be at least two licensees involved in the practice, who may be either partners, shareholders, members or employees of the firm. However, names of one or more past partners, shareholders, or members may be included in the firm name of a successor firm.

2. A partner, member or shareholder surviving the death or withdrawal of all other partners, members or shareholders may continue to practice under the partnership or corporate name for up to two years after becoming a sole practitioner, sole member or sole shareholder.

3. No licensee shall allow a person who is not a licensee and who is not in partnership with him or in his employ on a salary, to practice in his name. If a firm is incorporated, words so indicating must appear in or with the firm name each time it is used.

G. Communications. A CPA shall, when requested, respond to communications from the board in the manner requested by the board within 30 days of the mailing of such communications by certified mail, or by such other delivery

methods available to the board, to the last address received by the board from the CPA.

H. Applicability. All of the Rules of Professional Conduct in this Chapter shall apply to and be observed by licensees. Notwithstanding anything herein to the contrary, they shall also apply to and be observed by CPAs not in public practice, where applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July 1977), amended 4:358 (October 1978), LR 6:2 (January 1980), LR 9:207 (April 1983), LR 10:278 (April 1984), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1115 (September 1997).

Chapter 7. Continuing Professional Education (CPE)

§701. Basic Requirements

A. Each licensee shall participate in at least 120 hours of continuing professional education every three years. The hours of a licensee to whom §701.B.2 applies shall be reduced pro rata for the compliance period containing his effective date.

B. Effective Date

1. As to any licensee who was licensed as of January 1, 1980, the effective date of these requirements was January 1, 1980.

2. As to any licensee who obtains an initial license, the effective date of these requirements shall be January 1 of the year after his initial license was issued.

C. Compliance Period

1. The first compliance period for continuing professional education was the three-year period ended December 31, 1982, and subsequent compliance periods shall end on December 31 each third year thereafter.

2.a. - b. ...

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:4 (January 1980), LR 15:614 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1116 (September 1997).

§703. Standards for Programs

A. - B.1. ...

2. Instructors, lecturers or speakers should be qualified with respect to program content and teaching method used.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:4 (January 1980), LR 15:614 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1116 (September 1997).

§705. Programs which Qualify

A. The overriding consideration in determining whether a specific program qualifies as acceptable continuing education is that it be a formal program of learning which contributes directly to the growth in the professional knowledge and

professional competence of an individual licensed to practice as a certified public accountant. Formal programs of learning are those programs that are designed and primarily intended as educational activities, and comply with all CPE standards. Magazines are not designed as educational programs nor do they comply with CPE standards. Accordingly, examinations on magazine articles will not qualify for credit.

B. Accredited University or College Courses as Defined in §1300. Credit and noncredit courses earn continuing education credit as set forth in §709.

C. Formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify as set forth in §709.B.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:5 (January 1980), amended LR 15:614 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1116 (September 1997).

§707. Subjects which Qualify

A. The following general subject matters are acceptable so long as they contribute to the growth in professional knowledge and professional competence of the individual licensee:

1. - 6. ...

7. Personal Development. Personal Development is the field of study which includes self-management and management of others both inside and outside of the business environment. It includes issues of quality of life, interpersonal relationships, self-assessment, personal improvement, public relations, communications and writing skills. (See §709.G.1 for limitation.)

8. Professional Ethics. Professional Ethics includes the study of the codes of professional ethics applicable to all CPA registrants and their effect on business decisions. (See §709.G.2.)

B. Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute significantly to his growth in professional knowledge and competence. The responsibility for substantiating that a particular program is acceptable and meets the requirements rests solely upon the licensee.

C.1. - 2. ...

3. Courses which have product or service sales as their underlying content shall not qualify for CPE credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:5 (January 1980), amended LR 15:615 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1117 (September 1997).

§709. Credit Hours Granted

A.1. ...

2. Continuing education credit will be given for whole hours only, with a minimum of 50 minutes constituting one hour.

As an example, 100 minutes of continuous instruction would count for two hours; however, more than 50 minutes but less than 100 minutes of continuous instruction would only count for one hour. For continuous conferences, conventions and other programs when individual segments are less than 50 minutes, the sum of the segments will be considered equal to one total program.

3. Credit courses at accredited universities or colleges shall earn 15 hours of continuing education for each semester hour of credit. A quarter hour credit shall equal 10 hours.

4. Continuing education credit allowable for noncredit short courses at accredited universities or colleges will be determined by the board.

B. Individual Study Program. The amount of credit to be allowed for correspondence and formal individual study programs (including taped study programs) is to be recommended by the program sponsor. These programs shall be pretested by the developer to determine the average completion time. Credit will be allowed in the period in which the course is completed.

1. Noninteractive self-study programs shall receive CPE credit equal to one-half the average completion time.

2. Interactive self-study programs shall receive CPE credit equal to the average completion time provided the course sponsor is registered as an interactive self-study course sponsor with either the AICPA, NASBA, or a State Society of CPAs, and the sponsor confirms that the course is an interactive self-study course.

a. An interactive self-study program is one which simulates a classroom learning process by providing ongoing responses and evaluation to the learner regarding his or her learning progress. These programs guide the learner through the learning process by:

i. requiring frequent student response to questions that test for understanding of the material presented;

ii. providing evaluative responses and comments to incorrectly answered questions; and

iii. providing reinforcement responses and comments to correctly answered questions.

b. Ongoing responses, comments, and evaluations communicate the appropriateness of a learner's response to a prompt or question. Such responses, comments, and evaluations must be frequent and provide guidance or direction for continued learning throughout the program by clarifying or explaining assessment of inappropriate responses, providing reinforcement for appropriate responses, and directing the learner to move ahead or review relevant material. It is the response of the learner that primarily guides the learning process in an interactive self-study program. Not all technology based self-study programs constitute interactive programs. Technology based self-study programs must meet the criteria set forth in the definition of interactive self-study programs, as must other self-study programs developed using different modes of delivery.

3. CPE program developers shall keep appropriate records of how the average completion time of self-study programs was determined.

4. The entire continuing education requirement may be accomplished by programs designated as "self-study" programs.

5. The board will not approve any program that does not offer sufficient evidence that the work has actually been accomplished.

C. Service as Lecturer or Speaker

1. Credit for one hour of continuing professional education will be granted for each hour completed as a lecturer or speaker to the extent it contributes directly to the individual's growth in professional knowledge and competence and provided the program would qualify for credit under these rules. No credit will be granted for repetitious presentations of a group program.

2. In addition, a lecturer or speaker may claim up to two hours of credit for advance preparation for each teaching hour awarded in §709.C.1, provided the time is actually devoted to preparation.

3. ...

D. - E. ...

F. CPE Credit for Reviewers. Credit will be granted for actual time expended reviewing reports for the board's positive enforcement programs up to a maximum of 16 credit hours per year as approved by the board's practice monitoring administrator provided the reviewer completes and returns the assigned checklist(s).

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:5 (January 1980), amended LR 11:757 (August 1985), LR 13:13 (January 1987), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:615 (August 1989), LR 17:1068 (November 1991), LR 23:1117 (September 1997).

§711. Maintenance of Records and Control

A. Participants in formal CPE programs shall retain the documentation of their participation in CPE programs for a period of five years after the end of the calendar year in which the program is completed. Participants in formal CPE programs shall also retain advance materials, which should include the requirements set forth in §703.B.1, and other promotional material which reflects the content of a course and the name of the instructor(s) in the event the participant is requested by the board to substantiate the course content.

B. Acceptable evidence of completion includes, but is not limited to, the following:

1. for group programs, a certificate of attendance or other verification supplied by the sponsor which includes:

- a. sponsorship organization;
- b. location of course;
- c. title and/or description of content;
- d. dates attended; and
- e. the qualifying hours recommended by the course sponsor;

2. for self-study programs, a certificate supplied by the sponsor after satisfactory completion of a workbook, an examination, or an interactive course that confirms the name of the sponsor, the title and/or description of the course contents, the date of completion and the qualifying hours recommended by the course sponsor;

3. for a university or college course that is successfully completed for credit, an official transcript reflecting the grade earned;

4. for instruction credit, evidence obtained from the sponsor of having been the seminar lecturer or speaker at a program in addition to the items required by §711.B.1; and

5. for published articles, books, or CPE programs, evidence of publication.

C. Sponsors shall furnish a record of attendance or completion to participants which shall reflect the CPE credit hours earned.

D. Practitioners, partners, members, or shareholders and employees of a firm of certified public accountants will not be required to maintain the above records personally if the firm has a policy of maintaining such records for its members and professional employees and does maintain the records required herein for the required time and reports such information to each person at least once each year.

E. Each sponsoring organization shall maintain records of programs sponsored which shall show:

1. that the programs were developed and presented in accordance with the standards set forth in §703. If a program is developed by one organization and sponsored by another, the sponsoring organization shall not be responsible for program development standards and related record maintenance if:

a. it has reviewed the program and has no reason to believe that program development standards have not been met; and

b. it has on record certification by the developing organization that the program development standards have been met and that the developing organization will maintain the required records relative thereto;

2. date of each program presentation;

3. location of each course presentation;

4. name and qualifications of each seminar instructor, lecturer, and speaker conducting a program for the sponsor;

5. outline of the course or documentation which is the equivalent of an outline;

6. number of CPE contact hours recommended for each course;

7. an accurate record of attendance of participants which shall reflect the CPE credit hours earned by each participant; and

8. a summary of the program evaluations by the participants.

F. The CPE program sponsor shall maintain records and information required by §711.E.1-8 for a period of five years after the end of the calendar year in which the CPE course was completed.

G. Records required under this rule shall be maintained for five years and shall be made available to the board or its designee(s) for inspection at the board's request.

H. Failure of a CPE program sponsor to comply with the CPE standards shall be cause for the board to deny credit for courses offered by the CPE sponsor until such time as the CPE sponsor can demonstrate to the board that the compliance standards are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:5 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:615 (August 1989), LR 23:1118 (September 1997).

Chapter 9. Compensation and Expenses of Board Members

§901. Monthly Compensation

A. The officers of the board shall received compensation of \$150 per month and other members shall receive \$100 per month. This compensation shall be for time expended by such members in conducting and/or monitoring examinations, attending board meetings and hearings, issuing of certificates and licenses, conducting investigations, and discharging other duties and powers of the board.

B. A new appointee to the board shall be seated at the first board meeting he attends following his qualification as required by R.S. 37:74. A new appointee's compensation shall commence the month he is seated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:76.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:6 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1119 (September 1997).

Chapter 11. Certificate; License; Prohibited Acts

§1101. Necessity for Certificate, License; Prohibited Acts

No partnership, corporation, limited liability partnership, limited liability corporation, or any other organization or entity which may be authorized by law to engage in the practice of public accountancy, whether domiciled within or without the state of Louisiana, shall practice the profession of public accounting in Louisiana unless all partners, members, or shareholders thereof who practice public accounting in Louisiana are holders of licenses issued by the board and properly renewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:77.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 13:13 (January 1987), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1119 (September 1997).

Chapter 13. Examination

§1300. Definitions

Accredited University or College—a university or college accredited by any one of the six regional accreditation associations: the Southern Association of Colleges and Schools; Middle States Association of Colleges and Schools; New England Association of Schools and Colleges; North Central Association of Colleges and Secondary Schools; Northwest Association of Schools and Colleges; and Western Association of Schools and Colleges.

CPA Examination—the examination required for a certificate as a Certified Public Accountant (CPA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1119 (September 1997).

§1301. General Requirements

A.1. Examinations are ordinarily held in May and November of each year. Candidates for these examinations shall file complete application forms. A complete application is one that is properly filled out, including payment of the required examination fee and, if an initial application, accompanied by all required official transcripts.

2. Applications for the May examination must be received in the office of the board's agent no later than 5 p.m., March 1. Applications for the November examination must be received in the office of the board's agent no later than 5 p.m., September 1. If the last day for filing falls on a Saturday, Sunday or state of Louisiana holiday, the due date will be extended to include the next state of Louisiana working day.

3. First time or transfer-of-grades candidates who have not taken their accounting courses in Louisiana must include a copy of the course description(s) of all accounting courses not clearly identified by titles listed in §1303.A.

B. The examination shall consist of:

1. the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants; or

2. if applicable, the International Uniform CPA Qualification Examination (IQEX) prepared and graded by the American Institute of Certified Public Accountants.

C. ...

D. All examinations shall be in writing and must be completed in the time allotted by the board. To comply with the requirements of the American with Disabilities Act (ADA) the board may authorize modification to this Subsection.

E. A candidate must sit for all the sections for which he is scheduled in order to receive his grades and to be able to sit for the next examination.

F. In order to pass the examination a candidate must receive a grade of at least 75 in each section.

G. The following rule shall apply for conditional credit:

1. if a grade of 50 or more is made in each section, a candidate who passes at least two sections at a single examination shall receive credit for the sections passed, conditioned upon his passing the remaining section or sections as set forth in §1303.G.2;

2.a. a candidate who has received credit for passing at least two sections of the examination, as set forth in §1303.G.1, shall be required to remove the condition in any of the next four consecutive examinations but shall receive no credit for passing a section or sections at any examination in which he makes a grade of less than 50 in any other section;

b. beginning with the May 1998 examination and thereafter, a candidate who receives credit for passing at least two sections of the examination, as set forth in §1301.G.1, shall be required to remove the condition in any of the next six consecutive examinations but shall receive no credit for passing a section or sections at any examination in which he makes a grade of less than 50 in any other section.

H. Any candidate who makes a grade below 40 (39 or lower) in any section will not be allowed to take the next consecutive examination. This rule does not apply to conditioned candidates.

I. Grades shall be accepted from other states when a candidate for transfer of grades has met all the requirements of Louisiana candidates except that he sat for the examination in another state. He shall submit a completed initial application with an official transcript and a statement from an officer of the state board from which he is transferring as to dates of passing the examination and grades made. A conditioned candidate shall pay for each section for which he sits and shall pay a transfer fee at the time he requests the transfer. If a candidate has passed all sections in another state, he shall be required to pay a transfer fee, in addition to other requirements.

J. Each candidate shall be notified by mail, on the date specified by the American Institute of Certified Public Accountants, of the grades earned by him in each section of the examination. No information concerning grades will be released until such date.

K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1119 (September 1997).

§1303. Educational Requirements

A. To be eligible for examination and certification by and under auspices of the board, after December 31, 1996, an applicant shall possess a baccalaureate degree, duly conferred by an accredited university or college recognized and approved by the board, and shall have, in the course of attaining such degree, or in addition thereto, received credit for not less than 150 hours of postsecondary, graduate, or postgraduate education at and by an accredited college or university approved by the board. The applicant shall present evidence which shall consist of one or more official transcripts certifying that the applicant has attained the foregoing degree and educational hours, and said transcripts shall evidence award of credit for satisfactory completion of the following courses and credit hours, according to whether such courses and credits are taken as an undergraduate course and semester hour or a graduate course and semester hour.

	Undergraduate Semester Hours	Graduate Semester Hours
Accounting Courses:		
Intermediate	6	3
Cost	3	3
Income Tax	3	3
Auditing	3	3

Accounting Electives:	9	9
3 semester hours from one of the following: Advanced Financial Accounting, Not-for-Profit Accounting/Auditing, Theory		
6 semester hours in accounting above the basic and beyond the elementary level		
Total Accounting Courses	<u>24</u>	<u>21</u>
Business Courses (other than Accounting Courses):	24	24
Including at least 3 semester hours in Commercial Law, as it affects accountancy for CPA examination candidates		
Total Business Courses	<u>24</u>	<u>24</u>

1. The board will accept for business course credit semester hours earned in courses offered through the institution's College of Business and reported on official transcripts in the following areas:

- a. commercial law;
- b. economics;
- c. management;
- d. marketing;
- e. business communications;
- f. statistics;
- g. finance;
- h. data processing;
- i. mathematics (as it pertains to business);
- j. technical writing (covering subjects as opinions, tax planning reports, and management advisory service reports and management letters);
- k. computer science (other than courses such as COBOL or FORTRAN);

1. CPA examination review courses if the curriculum is developed and taught in a classroom environment by a faculty member under contract at the accredited college or university which is offering the course for credit.

2. Up to six semester hours in industry-specific business courses may be used to satisfy the business courses requirement described in §1303.A.1.

3. Up to six semester hours for internship may be applied to the 150-hour requirement, but may not be used to meet the accounting or business courses requirement.

4. Standard conversion (four quarter hours equals three semester hours) will be applied whenever a school is not on the semester basis.

5. Remedial courses may be applied to the 150-hour requirement, but may not be used to satisfy the accounting or business courses requirement.

6. Credit hours for repeated courses for which credit has been previously earned may not be applied to the 150-hour requirement.

B. An applicant who has taken an examination approved by the board prior to December 31, 1996 shall not be required to receive credit for 150 hours until his eligibility expires in

accordance with this Subsection. Such applicants remain eligible to take any examination administered by the board prior to December 31, 1999, and shall thereafter be eligible, subject to applicable rules and regulations of the board, to take sections of the examination in order to pass all sections of the examination. Candidates who have earned conditional credit(s) which expire after December 31, 1999 shall remain eligible until the expiration of the conditional credit(s). After expiration of their conditional credit(s) they shall be required to show completion of 150 semester hours before reapplying to take any other CPA examination in Louisiana.

C. In the event that the applicant's degree does not reflect the credit hours in the courses prescribed by §1303.A, the board may, on good cause shown by the applicant, allow the substitution of other courses that, in the board's judgment, are substantially equivalent to any of such prescribed courses or to the credit hours prescribed therein. Documentation of good cause for any such requested substitution shall be submitted by the applicant to the board upon affidavit sworn to and subscribed by the applicant and an officer of the university, college or other educational institution where the course to be substituted was taken. Such affidavit shall set forth a course description of the course sought to be substituted and a comparison of the content of such course to that of the course for which substitution is requested.

D. If the applicant's degree does not reflect the credit hours in the courses prescribed by §1303.A, an applicant may become eligible for examination and certification by and under the auspices of the board by having otherwise taken and completed the courses required by this rule and received credit for satisfactory completion thereof awarded by an accredited university, college, vocational or extension school recognized and approved by the board.

E. With respect to the course requirements specified by §1303.A, the board does not recognize credit received for courses granted on the basis of advanced placement examinations (such as CLEP, ACT or similar examinations). Except for correspondence courses at an accredited university approved by the board, the course credits specifically listed in §1303.A shall have been awarded pursuant to satisfactory completion of a course requiring personal attendance at classes in such course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 11:757 (August 1985), LR 13:13 (January 1987), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:616 (August 1989), LR 17:1070 (November 1991), LR 23:1120 (September 1997).

§1305. Penalties

A. - C. ...

D. Any person who communicates to another person any of the contents of a CPA examination which is classified as a nondisclosed examination shall be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:7 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1121 (September 1997).

Chapter 15. Certification

§1503. By Reciprocity

A. Definition

In Good Standing—the applicant is in compliance with the rules and regulations of the appropriate licensing board, including payment of the annual registration fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the applicant must have complied with all of the provisions of the appropriate licensing board order.

B. An applicant who has been certified as a public accountant by any state, as defined by R.S. 37:71(F), shall be eligible for certification by the board, provided that:

1. the applicant possesses a baccalaureate degree and satisfies the educational requirements of §1303;

2. the applicant has successfully passed the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants;

3. the scores achieved by the applicant on all examinations are certified to the board by the state which issued the applicant's original certification;

4. at the time of the application and consideration thereof by the board, the applicant possesses and confirms to the board current certification *in good standing* issued by any state which grants reciprocity certification to public accountants certified by the board. If the applicant has been certified in more than one state, the original, initial certification need not be current; however, it may not have been suspended for cause other than nonpayment of fees;

C. An applicant otherwise eligible for reciprocity certification under §1503.B, save for possession of a baccalaureate degree, or the credit for not less than 150 hours of university or college education, shall nonetheless be eligible for reciprocity certification by the board, provided that the applicant's original, initial certification as a public accountant by any state was issued on or before September 1, 1975, or the applicant has been in active, continuous practice as a certified public accountant for not less than four years during the 10 years immediately preceding the date on which the applicant's application for reciprocity certification is received by the board.

D. Notwithstanding the foregoing requirements for certification, an applicant for reciprocity certification who, at the time of the application and consideration by the board, possesses current certification in good standing issued by any state whose certification requirements have been determined by the board to be substantially equivalent to those set forth in §§1301, 1303, and 1501, and which grants and has agreed to reciprocity certification in a manner consistent with the provisions of this Subsection, shall be deemed, upon receipt of written confirmation from the appropriate state licensing board that the applicant's certification is current and in good standing, to have satisfied the requirements for certification by the board.

E.1. Applicants for reciprocal certificates shall not be required to reside or have a place for the regular transaction of business in Louisiana, but shall be required to take the CPA oath.

2. Complete applications for reciprocal certificates must be received in the board's office 30 days prior to a regular board meeting (§305).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78 and R.S. 37:77.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:7 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 23:1121 (September 1997).

Chapter 17. Qualifications for Licensing

§1702. By Reciprocity

Notwithstanding the foregoing requirements of §1701, an applicant for initial licensing who has qualified for reciprocity certification under §1503.D, and who possesses a current license to practice public accounting in good standing by virtue of certification or license issued by any state which grants and has agreed to reciprocity licensing in a manner consistent with the provisions of this Section, and whose experience requirements have been determined by the board to be substantially equivalent to those set forth in §§1703, 1705, and 1707, shall be deemed, upon receipt of written confirmation from the appropriate state licensing board that the applicant's license to practice is current and in good standing, to have satisfied the requirements for licensing by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:79, R.S. 37:77 and R.S. 37:75.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1122 (September 1997).

§1703. Qualifying Accounting Experience; Nature of Practice

A.1.a. - b. ...

2. by employment for a period equivalent in the opinion of the board to employment under §1703.A.1 in the accounting field in industry, business, government, or college teaching, or any combination of such types of employment, provided that such experience is obtained under proper supervision and is of sufficient depth and quality, as defined by §1705;

a. except for specific, prior approved, high-level governmental auditing positions, qualifying experience obtained through employment in industry, business, government or college teaching must be for a minimum of four years; or

3. ...

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:79, R.S. 37:77, and R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), amended by the Department of

Economic Development, Board of Certified Public Accountants, LR 15:617 (August 1989), LR 23:1122 (September 1997).

§1705. Equivalent Experience

A.1. ...

a. supervision in the application of generally accepted accounting principles by a licensed CPA holding a managerial level one or more positions above the applicant's level;

b. employment by a firm or organization having its financial statements audited or reviewed on a periodic basis by independent CPAs during the term of the applicant's employment. The applicant must have been responsible for providing information, explaining systems and procedures, and/or preparing schedules and analyses;

c. ...

d. employment as a full-time teacher of subjects primarily in the accounting discipline, with the rank of assistant professor or above (or comparable positions), for an accredited college or university as defined in §1300;

e. ...

2.a. - d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:79, R.S. 37:77, and R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 23:1122 (September 1997).

§1707. Advanced Degree Experience Equivalency

A master's degree, or a more advanced degree, with a concentration in accounting shall be considered equivalent to one year of experience obtained on the staff of a CPA or firm of CPAs. As used herein, concentration in accounting shall mean at least 15 credit hours in accounting courses (e.g., auditing, theory, practice, managerial, tax) the contents of which are at a higher level and are in addition to the courses used to satisfy the requirements to sit for the examination (§1303.A), with at least three of the required 15 credit hours in theory and practice and at least three credit hours in auditing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:79, R.S. 37:77, and R.S. 37:75.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), LR 11:758 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1122 (September 1997).

Chapter 19. Application for CPA Examination, Certification, Licensing; Procedures

§1903. Initial Application

A. First time or transfer candidates must complete an initial application form. An official transcript from each institution at which original credit toward the educational requirements was earned must accompany the initial application form. Official evidence of baccalaureate degree conferral must be included, regardless of any other degrees the candidate has earned.

B. Candidates who have completed courses in fulfillment of the educational requirement in institutions outside

Louisiana are required to submit course descriptions of all accounting and business courses not clearly identified by titles as listed in §1303.

C. Candidates who have completed educational requirements at institutions outside the U.S. must have their credentials evaluated by the Foreign Academic Credentials Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78, R.S. 37:79, R.S. 37:80 and R.S. 37:81.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1122 (September 1997).

§1909. Unable to Sit for Examination

If, after filing his application, a candidate is unable to sit for the CPA examination, he must so notify the agent of the board not later than seven working days prior to the first day of the examination; otherwise, the fee shall be forfeited. A service charge will be assessed on all refunds of examination fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:78, R.S. 37:79, R.S. 37:80 and R.S. 37:81.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 23:1123 (September 1997).

Chapter 20. Temporary Permits

§2001. Scope of Chapter

The rules of this Chapter govern the qualifications for and issuance of temporary permits authorizing the practice of public accountancy in the state of Louisiana for a specified period, pursuant to the authority vested in the board by R.S. 37:75(B)(13).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:1123 (September 1997).

§2003. Scope of Authority

A. Subject to satisfaction of the qualifications and procedures prescribed by this Chapter, a temporary permit may be issued by the board to a person who or a firm which is neither a resident of Louisiana or licensed by the board, but who is certified and licensed as a CPA by another state, to authorize the permittee's incidental, temporary practice of public accounting in Louisiana.

B. A temporary permit is valid and effective only for the period of time specified therein and may be issued under this Chapter as follows:

1. A temporary permit covering a period of one year and renewable annually may be issued to a person or firm certified and licensed or registered in another state whose laws and rules regarding qualification for certification, licensing, and firm registration, and whose laws and rules with respect to conduct and practice have been determined by the board to be substantially equivalent to those of Louisiana and provided such other state has agreed to grant similar privileges to persons or firms who are licensed CPAs of Louisiana.

2. For persons or firms certified and licensed or registered in states or jurisdictions whose laws and rules have

not been determined by the board to be substantially equivalent to those of Louisiana, a temporary permit issued shall be limited in term to a period of 90 days and to the performance of a single, specified engagement, and may not be renewed.

3. For the purpose of quality or peer reviews, a temporary permit covering a period of one year and renewable annually may be issued by the board to a person who or firm which is neither a resident of Louisiana nor licensed by the board, but who is certified and licensed as a CPA by another state, authorizing the practice of public accountancy in Louisiana limited solely to the performance of quality reviews or peer reviews.

C. The board's issuance of a temporary permit under this Chapter shall not be construed to provide any right or entitlement whatsoever to certification, licensing or registration under Louisiana law, or to the renewal of this permit after its expiration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 17:1070 (November 1991), LR 23:1123 (September 1997).

§2005. Qualifications, Disqualifications for Temporary Permit

A.1. - 2. ...

3. submit a completed application to the board, through its executive director, not less than 30 days prior to any activity within Louisiana to which the permit shall be applicable; and

4. pay the fee applicable to application for and issuance of temporary permits, as provided by Chapter 21 of these rules; provided, however, that the payment of a single fee shall satisfy the application fee requirement for two or more partners, shareholders, members or employees of the same firm applying for a temporary permit.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:1123 (September 1997).

§2007. Application Procedure

A. - B.2. ...

3. with respect to permits applied for under §2003.B.2., specify the nature of the professional engagement to be performed in Louisiana and for which the temporary permit is sought, the inclusive dates during which and the place or places at which such engagement will be performed, and the name and address of the person, firm or entity for whom or on whose behalf such engagement will be performed;

4. - 5. ...

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:1123 (September 1997).

§2009. Issuance of Permit

If the qualifications, requirements and procedures prescribed by this Chapter are met to the satisfaction of the board, the board shall issue to the applicant a temporary license to practice public accounting in the state of Louisiana specifying the time period and other restrictions which apply to such permit. A temporary permit shall be valid and effective only if signed by the secretary, treasurer, or executive director of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:75(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 15:618 (August 1989), amended LR 23:1124 (September 1997).

Chapter 21. Fees and Service Charges for CPA Examination, Certification, Licensing

§2101. Assessment of Fees

A. Examination, certification, licensing and other fees shall be assessed by the board in conformity with R.S. 37:80(E).

Service Charge for refund of examination fee (§1909)	\$ 50
Original certification	\$ 50
Original license	\$ 50*
Reinstatement of license	\$ 50
Replacement CPA certificate	\$ 50**
Temporary permits	\$100

* Candidates having passed the examination and meeting all other requirements for licensure must submit a complete application on forms prescribed by the board and accompanied by all required supporting documentation within 30 days after the official release date of examination grades to avoid payment of additional fees. Applications that are incomplete or late are subject to the original license fee.

** A replacement certificate shall be issued at the holder's request upon payment of fee and compliance with the following requirements.

1. In the event of a certificate which has been lost, the loss must be advertised in an appropriate newspaper for at least five times in 30 days and the request for replacement must be accompanied by a sworn statement that the certificate is lost and that the loss has been advertised in accordance with this rule.

2. In the event of a certificate which has been mutilated, the mutilated certificate must be returned to the board and if it is mutilated beyond the point of being able to be identified, the request must also be accompanied by a sworn statement that the returned document is, in fact, the certificate.

3. If the request for replacement is to have a change in the name in which the certificate is issued, the original certificate must be returned to the board and the request must be accompanied by the appropriate documentation of the name change.

B. Returned Check (formerly Subsection D)

A fee not to exceed \$25 will be assessed against each person who pays any obligation to the board with a returned check. Failure to pay the assessed fee within the notified period of time shall cause the application to be returned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:80.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), amended LR 9:209 (April 1983), LR 11:758 (August 1985), LR 13:13 (January 1987), LR 15:619 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997).

Chapter 23. Issuance of Certificate, License §2303. License

When a certified public accountant has met all the requirements for licensing, the board shall issue him a license to practice as a licensed certified public accountant. All such licenses shall be valid only when signed by the treasurer of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:81.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1124 (September 1997).

Chapter 25. Renewals of Certification, Licensing §2501. Annual Renewals, Reinstatement, Fees

A. - F. ...

G. In addition to the delinquent and reinstatement penalties, a fine may be assessed against those certified public accountants who have received three suspensions within the previous six years.

H. Practicing certified public accountants who have not timely renewed their certificates and licenses are in violation of R.S. 37:77 and therefore subject to the provisions of R.S. 37:84.B.

I. Failure to Timely Remit or Respond

1. No certificate and/or license of any certified public accountant who has failed to timely remit full payment of any fees, fines, penalties, expenses, or reimbursement of costs incurred by the board, which the certified public accountant owes the board or has been ordered to pay to the board, shall be annually renewed, or reinstated.

2. The board may refuse to renew, or to reinstate, any certificate and/or license any certified public accountant who has failed to comply with §507.G.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82 and R.S. 84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 9:209 (April 1983), LR 11:758 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997).

§2503. Annual Notice of Form of Practice

A.1. ...

2. Every certified public accountant who is licensed by the board and who is not practicing public accounting in his own name or who is not a partner, member or shareholder in a firm's registration must complete an Annual Notice of Form of Practice and CPA Firm Registration form.

B.1. ...

2. Each firm of certified public accountants with one or more Louisiana licensees as partners, members or

shareholders which does not have an office located in Louisiana shall designate a licensee to register that firm in Louisiana. The designated licensee shall file those forms, lists, and documents required of a firm maintaining offices in Louisiana as set forth in §2503.C.

C. Each resident licensee shall file annually at the time he applies for renewal of his license a list of all resident and nonresident partners, members or shareholders associated with him in the practice of public accounting and the location and resident partner, member, shareholder, or manager of each office or branch office maintained in Louisiana. One annual listing by the senior or resident partner, member or shareholder of each firm will satisfy this requirement for all partners, members or shareholders of the firm, providing that each partner, member or shareholder gives adequate reference to this listing.

1. In the event that a firm with one or more offices in Louisiana has no partner, member or shareholder who is a resident licensee, the firm must designate a licensee partner, member or shareholder to be responsible for the filing set forth above.

2. ...

D. ...

E. An original letterhead must be attached to the statement referred to in §2503.A and C. Only licensed employees or licensed associates may be shown on stationery but such names shall be separated from that of the individual practitioner or those of the partners, members or voting shareholders by an appropriate line. Deceased or retired partners, members or shareholders shall be appropriately identified.

F. An annual filing fee to be set by the board, based on the total number of partners, members and/or shareholders in the firm who are not licensed to practice in Louisiana but not to exceed \$15 per partner, member or shareholder with a maximum of \$2,500 per firm, shall be paid by each firm that files in accordance with the provisions of §2503.C.

G. A filing fee, calculated in the same manner as the most recent annual filing fee provided in §2503.F and prorated for the number of complete months remaining in the year, shall be paid by each firm that files in accordance with the provisions of §2503.D and that did not pay an annual filing fee for the immediately preceding filing period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 9:209 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997).

§2504. Practice Monitoring Programs

A. - C. ...

D. Any firm which shall have been subjected to a professional Peer Review or Quality Review approved by and acceptable to the board and conducted pursuant to standards not less stringent than Peer Review and Quality Review standards applied by the American Institute of Certified

Public Accountants shall be exempted from the provisions of §2504.A, B and C provided that the following requirements are satisfied. A firm which is a member of the Securities and Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms shall have furnished a copy of a Peer Review report to the board. Or, a firm which is not a member of the Securities and Exchange Commission Practice Section or the Private Companies Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms has an approved provider certify to the board, the accountant's or firm's participation in a Peer Review or Quality Review program and the dates of the accountant's or firm's most recent quality review should the firm seek exemption on the basis of a Peer Review or Quality Review.

E. - G. ...

H.1. Oversight. The board shall appoint a Peer Review Oversight Committee (PROC) whose function shall be the oversight and monitoring of sponsoring organizations for compliance and implementation of the minimum standards for performing and reporting on quality or peer reviews. The PROC shall consist of three members, none of whom are current members of the State Board of Certified Public Accountants of Louisiana. These members shall be currently licensed by the board.

2. Responsibilities. At least one member of the PROC will attend all meetings of the Society of Louisiana Certified Public Accountants Peer Review Committee (PRC), or any successor thereof.

3. Compensation. Compensation of PROC members shall be set by the board.

4. Duties of the PROC

a. The PROC will observe the plenary sessions of the PRC which include the assignment of reviews to committee members and the summary meeting where the conclusions of the review committee members are discussed;

b. ...

c. may observe the deliberations of the PRC and report their observations to the board; and

d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1071 (November 1991), LR 23:1125 (September 1997).

§2505. Change in Address or Practice Status

All certified public accountants or licensed certified public accountants shall promptly notify the board in writing within 30 days of any change in mailing address, practice status, or in the case of an individual, change of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 9:209 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1125 (September 1997).

Chapter 27. Renewals of Licensing—Reports on Continuing Professional Education

§2701. Submit with Application

Each licensee shall submit with his application for license renewal, on forms supplied by the board, a report of programs of continuing professional education completed during the applicable period and other information relative to fulfilling the continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1071 (November 1991), LR 23:1126 (September 1997).

§2703. In Lieu of Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:82.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), repealed by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997).

Chapter 29. Causes of Nonissuance, Suspension, Revocation or Restriction; Reinstatement

§2901. Charges in Writing; Investigative Files

A. Charges against holders of CPA certificates and/or licenses shall be made in writing, signed by the persons preferring the charges and addressed or delivered to the board. The board's investigative staff may establish or open an investigative file upon receipt of such charges.

B. Investigative files may be established or opened by any member of the board who has been designated as investigating officer, in accordance with §2903, for the purpose of investigating any potential violations of Chapter 5, Rules of Professional Conduct or the rules, regulations or statutes which the board is authorized to enforce, whether as a result of charges made in accordance with §2901.A or otherwise initiated by the investigating officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997).

§2903. Investigating Officer

All charges shall be referred to the members of the board or other persons designated as investigating officers, who are appointed by the chairman of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997).

§2909. Hearing

A. The board may at a hearing:

A.1.a. - b. ...

2. suspend any certificate and/or license. When a certificate and/or license is suspended, such suspension shall not be for a period of more than three years; during the time of suspension, the holder shall not be considered a CPA;

3. officially censure or reprimand the holder of any certificate and/or license;

4. invoke additional penalties and/or requirements to be complied with or refrained from, including but not limited to educational requirements, peer review, and/or restrictions on practice, for a designated period, or before reinstatement of a certificate or license. The failure by a person to abide by the additional penalties and/or requirements invoked by the board is a violation of the rules of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997).

§2911. Other

Any of the above provisions notwithstanding, the board may suspend or revoke a certificate and/or license without a hearing for the following causes:

1. conviction of a felony or entry of a plea of guilty or nolo contendere to a felony charge under the laws of the United States or of any state; or

2. conviction of any crime or entry of a plea of guilty or nolo contendere to any criminal charge an element of which is fraud or which arises out of such individual's practice of public accounting; or

3. the refusal of the licensing authority of another state to issue or renew a license, permit or certificate to practice public accounting in that state; or the revocation or suspension of, or other restriction imposed on, a license, permit or certificate issued by such licensing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:84.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997).

Chapter 31. Petitions for Rulemaking

§3101. Scope of Chapter

The rules of this Chapter prescribe the procedures by which interested persons may petition the State Board of Certified Public Accountants of Louisiana to exercise its rulemaking authority under the Louisiana Public Accountancy Law by the adoption, amendment or repeal of administrative rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997).

§3103. Definitions—as Used in this Chapter

Interested Person—a person who or which:

1. holds or has applied for any certification, license or permit issued by the board; or

2. is subject to the regulatory jurisdiction of the board;
or

3. is or may be affected by the practice of public accounting in the state of Louisiana.

Person—an individual natural person, partnership, corporation, company, association, governmental subdivision or other public or private organization or entity.

Rulemaking—the process by which the board exercises its authority under the laws of the state of Louisiana, including the Public Accountancy Law, R.S. 37:71-92, and the Administrative Procedure Act, R.S. 49:950-999, to formulate, propose and adopt, amend or repeal and promulgate administrative rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997).

§3105. Authorization

An interested person, individually or jointly with other interested persons, may, in accordance with the provisions of this Chapter, petition the board for the adoption, amendment or repeal of administrative rules and regulations within the rulemaking authority of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1127 (September 1997).

§3107. Petitions for Rulemaking

A. General Form. A petition for rulemaking must be made and submitted to the board in writing, legibly printed or typed in ink.

B. Title and Signature. A petition for rulemaking shall be plainly and prominently titled and styled as such and shall be manually signed by an individual petitioner, by an authorized officer or representative of the petitioner, or by an attorney at law representing the petitioner. The full name, title or office, if any, address and telephone number of a person signing a petition for rulemaking shall be printed or typed under the person's signature. Where a person signs a petition for rulemaking in a representative capacity, the petitioner or petitioners represented by the signature must be clearly identified.

C. Required Contents. A petition for rulemaking shall:

1. clearly identify each petitioner by name and address of residence or principal place of business;

2. describe the legal status or nature of the petitioner to establish that the petitioner is an interested person, within the meaning of §3103 of this Chapter;

3. in the case of a petition for adoption of a new rule, set forth a concise statement of the substance, nature, purpose and intended effect of the rule which the petitioner requests that the board adopt and citation to the statutory authority for the board's exercise or rulemaking authority in the manner and on the subject requested;

4. in the case of a petition for amendment of an existing rule, specify, by citation to the *Louisiana Administrative Code*, the rule or rules which the petitioner requests that the board amend, together with a concise statement of the manner in which it is proposed that the rule or rules be amended, the purpose and intended effect of the requested amendment, and

citation to the statutory authority for the board's exercise or rulemaking authority in the manner and on the subject requested;

5. in the case of a petition for repeal of an existing rule, specify, by citation to the *Louisiana Administrative Code*, the rule or rules which the petitioner requests that the board repeal, together with a concise statement of the purpose and intended effect of such repeal;

6.a. provide an estimate of the fiscal and economic impact of the requested rulemaking on:

i. the revenues and expenses of the board and other state and local governmental units;

ii. costs and/or benefits to directly affected persons;

iii. competition and employment in the public and private sectors; or

b. provide a statement that the petitioner has insufficient information or is otherwise unable to provide a reasonable estimate of such fiscal and economic impact;

7. set forth a concise statement of the facts, circumstances, and reasons which warrant exercise of the board's rulemaking authority in the manner requested; and

8. in the case of a petition for exercise of the board's emergency rulemaking authority under R.S. 49:953(B), a statement of the facts and circumstances supporting a finding by the board that an imminent peril to the public justifies the adoption, amendment or repeal of a rule upon shorter notice than that provided by R.S. 49:953(A).

D. Permissible Contents. In support of petitions for the adoption of a new rule or amendment of an existing rule, the board encourages, but does not require, the submission of a verbatim text of the rule proposed for adoption or amendment, prepared in the form prescribed by Title 1 of the *Louisiana Administrative Code* and as otherwise prescribed by the Office of the State Register. A petition for rulemaking may also be accompanied by such other information and data, in written or graphic form, as the petitioner may deem relevant in support of the petition for rulemaking.

E. Submission and Filing. Two copies of a petition for rulemaking, together with all supporting exhibits, if any, shall be filed with the board by delivery or mailing thereof to the board's executive director at the offices of the board.

F. Nonconforming Petitions. The board may refuse to accept for filing, or may defer consideration of, any petition for rulemaking which does not conform to the requirements of this Section.

G. Public Record. A petition for rulemaking shall be deemed a public record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1127 (September 1997).

§3109. Board Consideration

A. Consideration by the Board. A petition for rulemaking may be considered and acted on by the board at any regular or special meeting of the board. Within the time prescribed by §3111 for disposition of a petition for rehearing, the board may request additional information from the petitioners or interested persons other than the petitioners as it may deem relevant to its consideration of the petition.

B. Oral Presentations. Within the time prescribed by §3111 for disposition of a petition for rehearing, the board may, on its own initiative or at the request of the petitioner or any other interested person, permit petitioners and other interested persons to appear before the board to make an oral presentation of information, data, views, comments and arguments, in support of or opposition to the rulemaking requested by petitioners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1127 (September 1997).

§3111. Disposition of Petitions for Rulemaking

A. Form of Determination. The board may grant or deny a petition for rulemaking in whole or in part. The board's determination with respect to a petition for rulemaking shall be stated in writing and served on the person signing the petition. If the board denies a petition for rulemaking, in whole or in part, its determination shall state the reasons for the board's denial of the petition. If the board grants a petition for rulemaking, in whole or in part, it shall promptly thereafter initiate rulemaking proceedings in accordance with R.S. 49:953. Nothing herein shall be construed to require that the board, in granting a petition for the adoption or amendment of a rule, adopt or employ the specific form or language requested by the petitioner, provided that the rule or amendment proposed by the board gives effect to the substance and intent of the rule or amendment requested by the petitioner.

B. Time for Determination. The board will render its determination with respect to a petition for rulemaking:

1. within 90 days of the date on which a complete petition for rulemaking conforming to the requirements of §3107 hereof is filed with the board; or

2. within 60 days of the date on which, at the request of the petitioner, the board entertains an oral presentation by the petitioner, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1128 (September 1997).

§3113. Construction and Effect

A. Board Discretion in Rulemaking. The provisions of this Chapter are intended to provide an orderly and reasonable means for interested persons to petition the board to exercise its rulemaking authority under law and to provide for board consideration of such petitions. Petitions for rulemaking are addressed to the board's discretion as to the necessity or appropriateness of the adoption, amendment or repeal or a rule in the discharge of its licensing and regulatory responsibilities under the Public Accountancy Law. Nothing in the rules of this Chapter, accordingly, shall be deemed to create any right or entitlement in any person to require the board to exercise its rulemaking authority.

B. Nature and Effect of Determination. The board's disposition of a petition for rulemaking by a determination made under §3111.A does not constitute, and shall not be deemed to constitute, a "decision" or "order" within the

meaning of R.S. 49:951(A)(3) or a declaratory order or ruling within the meaning of R.S. 49:962, and the procedures prescribed by this Chapter do not constitute an adjudication within the meaning of R.S. 49:951(A)(1). A determination by the board with respect to a petition for rulemaking, accordingly, is final and not subject to judicial review or other appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2), 953(C), R.S. 37:75(A)(3), (B)(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1128 (September 1997).

Michael A. Henderson
Executive Director

9709#052

RULE

Department of Economic Development Office of Financial Institutions

Capital Companies Tax Credit Program (LAC 10:XV.301-321)

In accordance with the authority granted by the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority granted by R.S. 51:1929, the commissioner of the Office of Financial Institutions amends LAC 10:XV.301-321 entitled Capital Companies Tax Credit Program, to provide for administration of the program, definitions and guidelines for participation in the program by licensed Certified Louisiana Capital Companies.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part XV. Other Regulated Entities

Chapter 3. Capital Companies Tax Credit Program

§301. Description of Program

These rules implement the Capital Companies (CAPCOs) Tax Credit Program pursuant to R.S. 51:1921 et seq. and R.S. 22:1068(E). This program was created by Act 642 of the 1983 Legislature, amended by Act 891 in 1984, Acts 695 and 915 in 1986, Act 496 in 1989, Acts 279 and 724 of 1993, and Act 21 of 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1921-1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1128 (September 1997).

§303. Definitions Provided by Rule

The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise:

Affiliate and/or Affiliated Company—

a. solely for purposes of the transfer or sale of income or premium tax credits pursuant to R.S. 51:1924(F),

R.S. 22:1068(E)(4), and LAC 10:XV.305(B), *affiliate* is defined as follows:

i. any person that controls, is controlled by or under common control with another person (including any person that would become an affiliate as a result of a business combination); or

ii. members, partners, or shareholders and any family members thereof, of a legal entity that invests in a CAPCO;

b. for all other purposes, the term *affiliate* is defined as follows:

i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;

ii. when used with respect to a qualified Louisiana business, *affiliate* means a legal entity that directly or indirectly, through one or more intermediaries, controls or is controlled by a qualified Louisiana business;

c. for purposes of R.S. 22:1068(E)(2)(c), a *group of affiliates* shall mean a person and not less than all affiliates of such person.

Allowable Organization Costs—those direct costs incurred to incorporate and charter an entity; however, such costs are limited to 25 percent of capitalization, before any reduction for disallowed organization costs.

a. Direct organization costs include, but are not limited to legal, accounting, consulting fees and printing costs directly related to the chartering or incorporation process, pre-opening and development stage enterprise costs that may be capitalized under Generally Accepted Accounting Principles (GAAP) and filing fees paid to chartering authorities. Allowable organization costs may be capitalized and amortized over a period not to exceed five years.

b. Pre-opening and development stage enterprise costs that generally are not capitalized under GAAP, such as salaries and employment benefits, rent, depreciation, supplies, directors' fees, training, travel, expenses associated with the establishment of business relationships, postage and telephone fees are examples of costs that shall be expensed and not capitalized. Similarly, direct costs associated with the offering and issuance of capital stock are not considered to be organization costs and shall not be capitalized; these costs shall be deducted from the proceeds in recording initial capitalization.

Application—a completed application as determined by the commissioner.

Associate of a CAPCO—

a. any of the following:

i. a person serving a CAPCO, or an entity that directly or indirectly controls a CAPCO, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other people employed with the employee), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company),

managing member (in the case of a member-managed limited liability company), accountant, or general/special counsel;

ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the CAPCO;

iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §303.A. *Associate of a CAPCO*.a.i or ii;

iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §303.A. *Associate of a CAPCO*.a.i, ii or iii;

v. a person that invests in the CAPCO and has received an income tax credit or premium tax reduction under the CAPCO Program;

vi. an affiliate of any person described in §303.A. *Associate of a CAPCO*.a.v; or

vii.(a) a person that, within six months before or at any time after the date that a CAPCO invests in the person, is controlled by a CAPCO or any of its affiliates. A CAPCO's primary purpose is to provide venture capital to qualified Louisiana businesses in need of capital; not to invest in subsidiaries of the CAPCO or its affiliates, or companies that a CAPCO or its affiliates intend to control. Such investments will result in an associate determination and will not be considered "qualified investments" in assessing a CAPCO's compliance with its continuing certification requirements.

(b). Section 303.A. *Associate of a CAPCO*.a.vii.(a) does not apply to an investment made by a CAPCO in a qualified Louisiana business if, within six months before or at any time after the date of the investment, the qualified Louisiana business is not controlled by the CAPCO or its affiliates. However, even though a CAPCO may not intend to control a business in which it invests, it may obtain control over the qualified Louisiana business after its initial investment. If control is acquired after the initial investment as a result of the following circumstances, such control will not create an associate relationship under §303.A. *Associate of a CAPCO*.a.vii.(a):

(i). persons controlled by the CAPCO as a means of protecting the CAPCO's investment or resulting from a material breach of any financing agreement; or

(ii). instances involving transitory or short-term control of a person by a CAPCO (or an affiliate of the CAPCO) solely to remedy actions by the person that may cause the CAPCO's investment in such person to fail to be treated as a qualified investment, on the good faith belief that such operation of the person is necessary to ensure that the investment in the person will be treated as a qualified investment.

b. For the purposes of this definition, if any associate relationship described in §303.A. *Associate of a CAPCO*.a.i-vi exists between a person and the CAPCO at any time within six months before or at any time after the date that the CAPCO makes its initial investment in such person, that associate relationship is considered to exist on the date of the financing.

BIDCO—a Business and Industrial Development Corporation licensed pursuant to the Louisiana Business and Industrial Development Corporation Act, R.S. 51:2386 et seq.

Business—for the purposes of determining if a qualified Louisiana business operates primarily in Louisiana or performs substantially all of its production in Louisiana means an entity, together with all of that entity's affiliates that would directly or indirectly receive an economic benefit from a financing by a CAPCO. For purposes of this definition, an affiliate of the entity includes any entity which will become an affiliate of the entity as a result of a financing from a CAPCO.

CAPCO—a Certified Louisiana Capital Company certified pursuant to the Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

Capitalization—for purposes of initial certification, pursuant to R.S. 51:1925(B):

a. Generally Accepted Accounting Principles (GAAP) Capital: common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by disallowed organization costs;

b. LESS: the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the CAPCO: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit or premium tax reduction.

Commissioner—the commissioner of the Office of Financial Institutions.

Control—

a. Solely for purposes of determining control of or by a qualified Louisiana business or if a person is an associate of a CAPCO, control means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with

discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is used with respect to a specified person or legal entity.

b. For all other purposes, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

Date Certified, Newly Certified or Designated as a Certified Louisiana Capital Company—the date that the Department notifies a CAPCO of its certification.

Date on Which an Investment Pool Transaction Closes—Date that a CAPCO designates, and notifies the department of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

a. execution of all legal documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the CAPCO receives a cash investment of certified capital that is available for investment in qualified Louisiana businesses.

Equity Features—includes [pursuant to R.S. 51:1923(4) and (5)] the following:

a. **Royalty Rights**—rights to receive a percent of gross or net revenues, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. **Net Profit Interests**—rights to receive a percent of operating or net profits, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. **Warrants for Future Ownership**—options on the stock of the qualified Louisiana business. The qualified Louisiana business may repurchase a warrant (a "call") or the qualified Louisiana business may be required to repurchase a warrant (a "put") at some fixed amount or an amount based on a pre-agreed upon formula.

d. **Equity Sale Participation Rights**—conversion options of debt, to convert all or a portion of the debt to the qualified Louisiana business's stock, then to participate in the sale of the stock of the qualified Louisiana business.

e. **Equity Rights**—the receipt or creation of a significant equity interest in a qualified Louisiana business.

f. And such other conceptually similar rights and elements as the OFI may approve.

Family Member—spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

Financing Assistance Provided in Cash and The Investment of Cash—a transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; loan collection expenses or legal fees incurred by a CAPCO in protecting its collateral interest in an investment.

Investment—

a. for purposes of earning tax credits or reductions under R.S. 51:1923(1) and (2), R.S. 51:1924(A) and (B), or R.S. 22:1068(E), means a transaction that, in substance and in form, is the investment of cash in exchange for:

i. common stock, preferred stock, or an equivalent ownership interest in a CAPCO; or

ii. a loan receivable or note receivable from a CAPCO which has a stated final maturity date of not less than five years from the origination date of the loan or note;

iii. notwithstanding the above, an investment shall also include debt instruments which are obligations of the investing insurance company to a certified Louisiana capital company. Such debt instruments shall be converted into cash at a rate of not less than 10 percent per year from the date of the investment;

iv. however, at all times, in order to perfect the tax credits earned as a result of an investment described in Subparagraphs a-c of this Paragraph, the CAPCO shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

(a). available to be invested in qualified investments in qualified Louisiana businesses;

(b). invested in qualified investments in qualified Louisiana businesses, provided that the only investments in qualified Louisiana businesses that will comply with this Subparagraph are those qualified investments made subsequent to the investment date of the investment pool; or

(c). a combination of §303.A.*Investment.d.i* and ii.

b. an *Investment* furthers economic development within Louisiana. If the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the qualified Louisiana business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 50 percent of the proceeds derived from the investment are used by the qualified Louisiana business for two or more of the following purposes:

i. to hire significantly more Louisiana employees;

ii. to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana operations of the business or to construct or expand production or operating facilities located in Louisiana;

iii. to purchase inventory for resale from Louisiana-based operations or outlets;

iv. to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business;

v. to increase or preserve working capital and/or cash flows for Louisiana operations of the business;

vi. to preserve or expand Louisiana corporate headquarters operations;

vii. to support research and development or technological development within Louisiana;

viii. to fund start-up businesses that will operate primarily in Louisiana; or

ix. to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the investment furthers economic development within Louisiana, the CAPCO shall request in writing and the commissioner shall issue a written response to the CAPCO that, based upon relevant facts and circumstances, the proposed investment will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D of this Section. However, upon written notification to the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination.

Louisiana Employees—

a. Full-time and part-time employees and officers, converted to a full-time equivalent basis, that perform services in Louisiana for a qualified Louisiana business in exchange for salaries, wages and/or other compensation, which is included in Louisiana withholding tax returns filed by the qualified Louisiana business.

b. The term *Louisiana employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a qualified Louisiana business on a contract basis; or

ii. employees of any business that perform services (contractor) for a qualified Louisiana business.

For example: a contractor may enter into an agreement to perform services for a qualified Louisiana business. The contractor's employees that perform services under that agreement would not be Louisiana employees under this definition.

Net Income—net income as defined under or consistent with Generally Accepted Accounting Principles.

Net Worth—net worth as defined under or consistent with Generally Accepted Accounting Principles.

Office—the Office of Financial Institutions (OFI).

Operates Primarily in Louisiana—a business operates primarily in Louisiana if, at the time of the initial investment, the business is in good standing with the Louisiana Secretary of State, if applicable, and meets one or more of the following:

a. the business has more than 50 percent of its total assets located in Louisiana;

b. more than 50 percent of the business' net income is allocable or apportionable to Louisiana in accordance with Louisiana income tax law, but disregarding whether the business is taxable or tax-exempt for Louisiana income tax purposes;

c. more than 50 percent of the total salaries, wages and/or other compensation of the business are paid to Louisiana employees; or

d. the CAPCO has, prior to investing in the business, received a written opinion from the commissioner that, based upon relevant facts and circumstances, the business has demonstrated it operates primarily in Louisiana and will continue to operate primarily in Louisiana for at least one year from the date of any financing by a CAPCO. The commissioner's letter opinion shall be issued within 30 days of the request by the CAPCO, and shall be part of the annual review required to be performed by the department and billed according to provisions contained in §307.D. However, upon written notification to the CAPCO, the 30-day period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination.

Participation Between CAPCOs—are loans or other investments in which one or more CAPCOs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a CAPCO may only include its participation (ownership interest) as a qualified investment.

Performs Substantially All of Its Production in Louisiana—a business performs substantially all of its production in Louisiana if:

a. the business derives more than 50 percent of its gross receipts from the sale of manufactured, produced or processed goods; and

b. more than 50 percent of the total value added to the business' finished product is added within Louisiana.

Permissible Investments—for purposes of R.S. 51:1926(B), cash deposited with a federally-insured financial institution; certificates of deposit in federally-insured financial institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; or any other investments approved in advance and in writing by the commissioner.

Person—a natural person or juridical entity. If used with respect to acquiring control of or controlling a specified person, *person* includes a combination of two or more persons acting in concert.

Primary Business Activity of a CAPCO—the investment of a CAPCO's certified capital primarily in qualified investments in qualified Louisiana businesses. Primary business activity is demonstrated by having at all times, a minimum of 50 percent of total certified capital of each investment pool, which has been collected in cash, available for investment in or having been invested as qualified investments in qualified Louisiana businesses.

Sophisticated Investor—any of the following:

a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;

b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Total Certified Capital Under Management—for purposes of investment limits, pursuant to R.S. 51:1926(B):

a. GAAP Capital: common stock, preferred stock, general partnership interests, limited partnership interests and other equivalent ownership interests, all of which shall be exchanged for cash; surplus; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by disallowed organization costs.

b. PLUS: Qualified Non-GAAP Capital: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. LESS: the following, when any GAAP capital or Qualified Non-GAAP capital is subject to redemption or repurchase by the CAPCO:

The GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital:

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1921-1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1128 (September 1997).

§305. Income and Premium Tax Credits

A. In order to be eligible for any income or premium tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a CAPCO voluntarily decertifies and preserves all income and premium tax credits, if debentures, notes or any other quasi-equity/debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income or premium tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of

Insurance or the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:1927 and R.S. 51:1928. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Subpart.

B. Income or premium tax credits may be sold or transferred, subject to the following conditions.

1. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirors. Furthermore, even though a transfer or sale of credits, known as an election under this Section, may involve several entities, only one election may be made during any calendar year. Therefore, an investor in a CAPCO may only transfer or sell credits once during a calendar year and the entity that purchases the credit may not transfer credits obtained during the year of purchase. In any subsequent calendar year, the purchaser of the credits may make one election per year, if needed.

2. Companies and/or individuals shall submit to the Department of Insurance or the Department of Revenue and Taxation in writing, a notification of any transfer or sale of income or premium tax credits within 30 days of the transfer or sale of such credits. The notification shall include the original investor's income or premium tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for both transferor and acquiror, the date of transfer, and the amount transferred.

3. If an insurance company transfers premium tax credits between affiliates or sophisticated investors, the notification submitted to the Department of Insurance shall be provided on forms prescribed by the Department of Insurance.

4. If income tax credits are transferred between affiliates or sophisticated investors (acquirors), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquiror shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquiror;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquiror; and
- c. credits taken by the transferor and each acquiror under R.S. 51:1924(A) and (B).

5. Failure to comply with this rule will jeopardize the income or premium tax credit transferred.

6. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:1924(A) and (E) or R.S. 22:1068(E)(3), respectively. Any income or premium tax credits transferred or sold pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), which credits are subject to recapture pursuant to R.S. 51:1927(C), 51:1928(A) or R.S. 22:1068(E)(4), shall be the liability of the taxpayer that actually claimed the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1924, 1927, 1928 and 1929, and R.S. 22:1068(E).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 16:762 (September 1990), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1132 (September 1997).

§307. Application Fees, Other Fees

A. An advance notification of intent to seek certification shall be filed by a company or entity, the applicant, prior to filing an application. An advance notification fee of \$100 shall be submitted with the advance notification form.

B. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000. If 0.2 percent of the total taxes to be exempted exceeds the amount of the application fee originally submitted, the CAPCO shall submit the difference, up to the \$5,000 maximum, to the office. Checks should be payable to the Office of Financial Institutions.

C. The office reserves the right to return the advance notification or application to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications and applications which have been accepted will not be refundable.

D. The commissioner shall conduct an annual review of each CAPCO to determine the company's compliance with the rules and statutes. Examiner time shall be billed at a rate not less than \$50 per hour, per examiner, or \$500 per review, whichever is greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925, 1927 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1133 (September 1997).

§309. Application Process

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified equity investments, or financing assistance as a licensed BIDCO, as required in R.S. 51:1921 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

B. The form for applying to become a CAPCO may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filings shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Said application and all submissions of additional information reported to the office, shall be forwarded via United States mail or private or commercial interstate carrier, properly addressed and postmarked and signed by a duly

authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. An incomplete application shall be resubmitted, either in a partial manner or totally, as deemed necessary by the commissioner. A previously incomplete application may be resubmitted, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a CAPCO and/or the department may be subject to civil and criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1133 (September 1997).

§311. Conditions of Certification

A. All CAPCOs, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a certified Louisiana capital company and shall certify and acknowledge that the act statement is true and correct:

1. The CAPCO has an initial capitalization of not less than \$200,000. If any capitalization is repurchased or contemplated to be repurchased by the CAPCO within five years after certification, the CAPCO will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Furthermore, any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits or premium tax reductions.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the CAPCO will provide a written notification to the office.

3. The board of directors will not elect new or replace existing board members or declare dividends without prior written consent of the office for the first two years of business.

4. The CAPCO will immediately notify the office when its total certified capital under management is not sufficient to enable the CAPCO to operate as a viable going concern.

5. The CAPCO will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The CAPCO will comply with the CAPCO Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The CAPCO will adopt OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant to the commissioner.

B. If a CAPCO contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the CAPCO shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor solicitations must be submitted to the office prior to investor solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1134 (September 1997).

§313. Requirements for Continuance of Certification and Decertification

A. In calculating the percentage requirements for continued certification of an investment pool under Subsection A of R.S. 51:1926, decertification of an investment pool under R.S. 51:1927 and voluntary decertification of an investment pool under R.S. 51:1928:

1. The numerator for the investment pool shall be:

a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held or intended to be held for a minimum of one year; and

b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.

2. For purposes of the calculation of the numerator, no qualified investment may be counted more than once.

3. If a CAPCO invests a portion of its total certified capital in a majority-owned BIDCO, the qualified investments made by the majority-owned BIDCO shall be added to the numerator under §311.A.1.a and b.

4. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a CAPCO's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance.

However, if more than one investment pool operates simultaneously, a CAPCO may allocate its qualified investments to all open investment pools, provided such allocations are reasonable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926, 1929 and 1933.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1134 (September 1997).

§315. Information Required from Qualified Louisiana Businesses

Prior to making an investment in a business, a CAPCO shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the CAPCO in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business.

For example: a board resolution;

2. a binding waiver of rights and consent agreement sufficient to allow the CAPCO, upon request to the business, full access to all information and documentation of the business which is in any way related to the investment of the CAPCO in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow acquisition by the CAPCO of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of proceeds, and that the business will provide to the CAPCO, documentation of the use of proceeds; and

5. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926, 1927, 1928 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1350 (September 1997).

§317. CAPCO Report and Record Requirements

A. Reporting Requirements. Pursuant to R.S. 51:1926(F)(2), CAPCOs are required to submit to the department reports of selected information for each qualified investment made in the previous calendar year. Senate Concurrent Resolution Number 40 of the 1996 Regular Session also requires that the department determine the economic development impact of the CAPCO Program on the state. In order to provide such a report to the Senate, economic information for each company in which a CAPCO has invested shall be obtained and reported to the department by each CAPCO. Such reports shall be submitted on forms provided or approved by OFI.

B. Record Requirements. In order for the commissioner to properly review and analyze a CAPCO's compliance with this rule and all relevant statutes, each CAPCO shall obtain from each business in which the CAPCO has invested, and maintain in its possession for review, any and all records deemed necessary by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1926 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1135 (September 1997).

§319. Premium Tax Reductions for Insurance Companies

A. The Allowable Annual Premium Tax Credit (AAPTC) that may be taken during any year shall be the lesser of:

1. 10 percent of premium tax reduction allowable; or
2. 25 percent of the gross premium tax liability for the base year of investment. Furthermore, the credit taken in any year shall not exceed the net premium tax liability for that year.

B. The Premium Tax Reduction Allowable (PTRA) is 120 percent of the investment in a CAPCO.

C. The Gross Premium Tax Liability in the Base year of Investment (GPTLB) is the gross premium tax liability in the year of investment, before any credits.

D. The Gross Premium Tax Liability (GPTL) is the gross premium tax liability during any year for which the CAPCO credit may be taken, before any credits.

E. The Net Premium Tax (NPT) is the GPTL, reduced by credits provided in R.S. 22:1068(A), (B), (C) and (D), and credits for Louisiana Insurance Guaranty Association (LIGA) and Louisiana Life and Health Insurance Guaranty Association (LHIGA) assessments. If the AAPTC ever exceeds the NPT in any year, the excess may be carried forward until utilized.

Example

Base (taxable) years of investment, assuming multiple investments of \$2,000,000 and \$1,000,000, respectively, by an insurer in CAPCOs.

	1993	1994
Investment by Insurer *	2,000,000	1,000,000
Premium Tax Reduction Allowable PTRA (120 percent of Investment)	2,400,000	1,200,000
Gross Premium Tax Liability GPTL of Insurer	1,000,000	1,100,000
Credits from R.S. 22:1068 (A), (B), (C), (D), LIGA or LHIGA	(600,000)	(540,000)
Net Premium Tax Before CAPCO Credits NPT	400,000	560,000
Allowable Annual Premium Tax Credit AAPTC for the Base Year of Investment is the Lesser of:		
(1) 10 percent of PTRA	240,000	120,000

(2) 25 percent of GPTLB	250,000	275,000
And Further limited to		
100 percent of NPT	400,000	560,000
For subsequent years, the AAPTC for each investment is the lesser of:		
(1) The Base Year Reduction	240,000	120,000
(2) 100 percent of NPT for the Subsequent Years		

If Net Premium Tax liabilities of \$500,000 per year are estimated for the period of 1993 through 2003, the following amount of AAPTC may be taken:

YEAR	1993	1994	AAPTC
1993	(240,000 + 0)		\$ 240,000
1994	(240,000 + 120,000)		360,000
1995	(240,000 + 120,000)		360,000
1996	(240,000 + 120,000)		360,000
1997	(240,000 + 120,000)		360,000
1998	(240,000 + 120,000)		360,000
1999	(240,000 + 120,000)		360,000
2000	(240,000 + 120,000)		360,000
2001	(240,000 + 120,000)		360,000
2002	(240,000 + 120,000)		360,000
2003	(0 + 120,000)		120,000
TOTAL			\$3,600,000

* NOTE: The amount of investment by an insurer in a CAPCO, in any one year, that would maximize the use of premium tax credits is calculated as follows:

$$\frac{(\text{GPTLB} \times 25 \text{ percent} \times 10 \text{ years})}{1.20}$$

In this example, the formula would yield an investment amount of \$2,083,333 in 1993 and \$2,291,666 in 1994.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1068(E) and R.S. 51:1924 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), LR 23:1135 (September 1997).

§321. Severability

If any section, term, or provision of any of the foregoing rules, LAC 10:XV.301-320, is for any reason declared or adjudged to be invalid, such invalidity shall not affect, impair, or invalidate any of the remaining rules, or any term or provision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20:154 (February 1994), amended by the Office of Financial Institutions, LR 23:1136 (September 1997).

Larry L. Murray
Commissioner

9709#036

RULE

Department of Economic Development Racing Commission

Maximum Number of Jockeys (LAC 46:XLI.901)

The Racing Commission amends LAC 46:XLI.901, "Maximum Number of Jockeys," to be in line with provisions in other racing jurisdictions (change from three to two riders per agent).

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLI. Horseracing Occupations

Chapter 9. Jockey Agent

§901. Maximum Number of Jockeys

A jockey agent may not, after June 30, 1997, contract the riding engagements of more than two riders. No jockey agent shall contract for more than two riders to start in any one race, except stakes races, who are under contract to the same jockey agent. As used herein, *Jockey Agent* shall mean any person who contracts engagements for a rider or riders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:433 (December 1976), LR 3:29 (January 1977), repromulgated LR 4:277 (August 1978), amended LR 10:593 (August 1984), amended by the Department of Economic Development, Racing Commission, LR 23:1136 (September 1997).

Paul D. Burgess
Executive Director

9709#022

RULE

Board of Elementary and Secondary Education

Bulletin 746—Noncertified School Personnel (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the State Board of Elementary and Secondary

Education adopted a revision to the interim emergency policy for hiring full-time/part-time noncertified school personnel. LAC 28:I.903.I is amended in its entirety as follows:

Title 28
EDUCATION

Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, State Plans
§903. Teacher Certification Standards

A. Bulletin 746

B. - H. ...

I. Noncertified Personnel

1. Full-time/part-time noncertified school personnel, excluding speech, language, and hearing specialists, may be employed by local public education agencies experiencing extreme difficulty in employing certified teachers for the classroom, provided that the following documentation is submitted to the Department of Education:

a. a signed affidavit by the local superintendent that the position could not be filled by a certified teacher;

b. submission of names, educational background, subject matter and grade level being taught as an addendum to the Annual School Report.

2. Individuals employed under this policy must:

a. hold a minimum of a baccalaureate degree from a regionally accredited institution;

b. take all appropriate areas of the NTE at the earliest date that it is offered during the first year of employment and all appropriate areas at least once each year during subsequent years of employment; and

c. earn six semester hours of college course work each year as indicated below:

i. Teachers who have not completed a teacher education program must:

(a). within the first year of employment and prior to consideration for re-employment the second year, achieve the required scores on the Communication Skills and General Knowledge portions of the NTE; be officially admitted to a teacher education program; and obtain a prescription or outline of course work required for certification;

(b). prior to consideration for re-employment each year, complete at least six semester hours of college course work as prescribed by the college or university to complete a teacher education program.

ii. Teachers who have completed a teacher education program but who have not achieved the required scores on all parts of the NTE, prior to consideration for re-employment each year, must earn six semester hours appropriate to the area of the NTE (General Knowledge, Professional Knowledge, Communication Skills, Specialty Area) in which the score was not achieved.

A university sponsored seminar, workshop or course specially designed for preparing for the NTE may be used once to substitute for three semester hours of the required course work. Documentation from the university must be provided to verify participation.

3. The following documentation, as appropriate, shall be kept on file in the LEA's superintendent's/personnel office:

a. official transcripts showing a minimum of a baccalaureate degree from a regionally accredited institution;

b. documentation that the teacher has been officially admitted to a teacher education program, if applicable;

c. an outline by the college or university of the course work required for certification, or an outline of courses to help achieve the appropriate NTE scores for persons who have completed a teacher education program;

d. official transcripts showing successful completion of the six semester hours as prescribed by the college or university since the last employment under this policy;

e. documentation to verify one-time participation in a university sponsored or state approved seminar/workshop/course for NTE preparation for teachers who have completed a teacher education program;

f. an original NTE score card showing the NTE has been taken in all appropriate areas since the last employment under this policy; and

g. documentation that efforts for recruitment of certified teachers have been made (e.g., newspaper advertisements, letters, contacts with colleges, and so forth).

4. These individuals shall be employed at a salary that is based on the effective state salary schedule for a beginning teacher with a baccalaureate degree and a certificate with zero years of experience. Local salary supplements are optional.

5. The total number of years a person may be employed according to the provisions of this policy is five years.

6. To be eligible for re-employment under this policy, a teacher who has not met the requirement of earning six semester hours of college credit or who has not taken the NTE must meet one or more of the following conditions:

a. Medical Excuse. When serious medical problems of the teacher or immediate family in the same household exist, a doctor's statement is required with a letter of assurance from the teacher that six semester hours will be earned prior to the beginning of the next school year.

b. Required Courses not Available. A letter of verification from area universities is required stating that the required courses are not being offered.

c. Change of School, Parish, or School System. Re-employment is permitted only if the change is not part of a continuous pattern.

d. Change of Certification Areas. Re-employment is permitted with assurance that the requirements for continued employment under this policy will be met.

(These are the only conditions that may be used. Documentation which supports the above condition must be maintained in the teacher's personnel file.)

7. This policy does not apply to university laboratory schools.

J. - L. ...

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

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 23:1137 (September 1997).

Weegie Peabody
Executive Director

9709#054

RULE

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

**Mammography Physicist Certification and
Radiographer Trainee Requirements
(LAC 33:XV.Chapters 5 and 6)(NE019)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection Division regulations, LAC 33:XV.Chapters 5 and 6 (NE019).

This rule amends the Radiation Protection Division's regulations concerning requirements for radiographer trainees in Chapter 5 and mammography physicists' certification in Chapter 6. Amendments to Chapter 5 allow individuals who have not passed the State Radiography Certification exam to continue working as radiographers under specific conditions and limitations. Amendments to Chapter 6 require that all mammography physicists be certified to perform mammography equipment surveys for quality control in Louisiana. Chapter 6 also allows for individuals presently working as mammography physicists to be certified under their on-the-job experience.

This 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 XV. Radiation Protection

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

§503. Definitions

As used in this Chapter, the following definitions apply:

[See Prior Text]

Radiographer—any individual who has successfully completed the training, testing, and documentation requirements contained in LAC 33:XV.575.A.

Radiographer Assistant—any individual who:

a. has five years of documented experience as a radiographer who previously qualified under these regulations prior to January 1, 1995;

b. has a documented record of safely performing industrial radiography; and

c. has received confirmation from the division that such individual is acceptable to be a radiographer's assistant.

Radiographer Trainee—any individual who has successfully completed the training, testing, and documentation requirements contained in LAC 33:XV.575.A, including the following conditions:

a. may have not completed the on-the-job training requirement consisting of 40 hours completed as part of a three-person crew composed of an instructor, a radiographer, and the trainee;

b. has not completed the radiation safety examination required by LAC 33:XV.575.A.6; and

c. has received written confirmation from the division that the individual is acceptable to be a radiographer trainee. Trainee status will be granted only once for each individual and is valid for no longer than 12 consecutive months.

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 23:1138 (September 1997).

**Subchapter A. Equipment Control
§543. Radiation Survey Instruments**

[See Prior Text in A - C]

D. Each radiation survey instrument shall be checked with a radiation source at the beginning of each day of use and at the beginning of each work shift to ensure it is operating properly. Records of the checks shall be maintained for two years.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 23:1138 (September 1997).

§550. Performance Requirements for Radiography Equipment

[See Prior Text in A - A.1]

2. in addition to the requirements specified in Subsection A.1 of this Section, the following requirements apply to radiographic exposure devices and associated equipment:

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

3. in addition to the requirements specified in Subsection A.1 and 2 of this Section, the following requirements apply to radiographic exposure devices and associated equipment that allow the source to be moved out of the device for routine operation:

[See Prior Text in A.3.a - 5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 21:554 (June 1995), LR 23:1138 (September 1997).

**Subchapter B. Personal Radiation Safety
Requirements for Radiographers**

§575. Training and Testing

[See Prior Text in A - C]

D. At temporary job sites each licensee or registrant shall provide, as a minimum, two-person crews. Such crews shall consist of at least two qualified radiographers, an approved

instructor directly supervising a qualified radiographer trainee, or an approved instructor supervising a radiographer assistant.

E. A radiation safety officer (RSO) shall be designated for every industrial radiography license and certificate of registration, or license condition specifying such, issued by the department. The RSO's qualifications shall include:

1. possession of a high school diploma or certificate of high school equivalency based on the GED test;
2. completion of the training and testing requirements of this Section; and
3. two years of documented radiation protection experience, including knowledge of industrial radiographic operations, with at least 40 hours of active participation in industrial radiographic operations.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), LR 20:999 (September 1994), LR 23:1138 (September 1997).

Subchapter C. Precautionary Procedures in Radiographic Operations

§590. Specific Requirements for Radiographic Personnel Performing Industrial Radiography

* * *

[See Prior Text in A - C]

D. No individual other than a radiographer, a radiographer assistant, or a radiographer trainee who is under the personal supervision of a radiographer instructor shall manipulate controls or operate equipment used in industrial radiographic operations.

* * *

[See Prior Text in E - F]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 20:653 (June 1994), amended LR 23:1139 (September 1997).

Chapter 6. X-Rays in the Healing Arts

§602. Definitions

As used in this Chapter, the following definitions apply. Other definitions applicable to this Chapter may be found in LAC 33:XV.Chapters 1 and 2.

* * *

[See Prior Text]

Mammography Physicist—an individual who has submitted credentials to the division and who satisfies one or more of the following criteria:

1. is certified in radiological physics by the American Board of Radiology or the American Board of Medical Physics and who continues to meet the Mammography Quality Standards Act (MQSA) requirement of 15 hours of continuing mammography education every three years;
2. has a master's or doctoral degree from an accredited college or university in physics, engineering, chemistry, or environmental science, has at least one year of radiation survey experience that includes performing instrument surveys on at least 20 mammography units, and continues to

meet the MQSA requirement of 15 hours of continuing mammography education every three years;

3. has a bachelor's degree from an accredited college or university in physics, engineering, chemistry, environmental science, or any biological science that included at least 10 semester hours of college-level physics, has had at least five years of experience with making radiation measurements that includes performing instrument surveys on at least 20 mammography units, and continues to meet the MQSA requirement of 15 hours of continuing mammography education every three years; and

4. has been approved by the division.

* * *

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 23:1139 (September 1997).

§603. General and Administrative Requirements

* * *

[See Prior Text in A - A.11]

12. Any person proposing to conduct a diagnostic or screening mammography program shall not initiate such a program without having a complete mammography facility survey performed by a mammography physicist initially and at least annually thereafter.

* * *

[See Prior Text in B - C.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:976 (October 1996), LR 23:1139 (September 1997).

Gus Von Bodungen
Assistant Secretary

9709#040

RULE

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

Radioactive Material and Waste
(LAC 33:XV.325, 1302 and 1307)(NE018)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection Division regulations, LAC 33:XV.Chapters 3 and 13 (NE018).

Minor changes are made by this rule to Chapters 3 and 13, primarily to clarify the regulations. These changes were

suggested by the Nuclear Regulatory Commission (NRC) for the state of Louisiana to maintain compatibility with federal regulations and to remain fully compatible as an NRC Agreement State.

This 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 XV. Radiation Protection**

Chapter 3. Licensing of Radioactive Material

Subchapter D. Specific Licenses

§325. General Requirements for the Issuance of Specific Licenses

* * *

[See Prior Text in A - D.7.c]

d. Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leakage has occurred) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years that shall be kept on the following:

i. all areas designated and formerly designated restricted areas as defined in LAC 33:XV.102;

ii. all areas outside of restricted areas that require documentation under LAC 33:XV.325.D.7.a;

iii. all areas outside of restricted areas where current and previous wastes have been buried, as documented under LAC 33:XV.478; and

iv. all areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under LAC 33.XV.461.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 23:1140 (September 1997).

Chapter 13. Licensing Requirements for Land Disposal of Radioactive Waste

Subchapter A. General Provisions

§1302. Definitions

A. As used in this Chapter, the following definitions apply:

* * *

[See Prior Text]

Geologic Repository—a system that is intended to be used, or may be used, for the disposal of radioactive waste in excavated geologic media. A geologic repository includes the geologic repository operations area and the portion of the geologic setting that provides isolation of the radioactive waste.

* * *

[See Prior Text]

Land Disposal Facility—the land, buildings, structures, and equipment that are intended to be used for the disposal of

radioactive wastes. For purposes of this Chapter, a "geologic repository" is not considered a "land disposal facility."

* * *

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 23:1140 (September 1997).

§1307. Specific Technical Information

The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this Chapter will be met:

* * *

[See Prior Text in A - I]

J. A description of the quality assurance program, tailored to low-level radioactive waste disposal, developed and applied by the applicant for the determination of natural disposal characteristics and for quality assurance during the design, construction, operation, and closure of the land disposal facility and for the receipt, handling, and emplacement of waste.

* * *

[See Prior Text in K - M]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 23:1140 (September 1997).

Gus Von Bodungen
Assistant Secretary

9709#039

RULE

**Department of Environmental Quality
Office of the Secretary**

Declaratory Rulings (LAC 33:I.Chapter 11)(OS022)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Office of the Secretary regulations, LAC 33:I.Chapter 11 (OS022).

This rule establishes procedures for issuance of declaratory rulings by the Department of Environmental Quality on significant matters when a request for a declaratory ruling has been received by the department. Promulgation of this rule is required by R.S. 30:2050.10.

This 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 I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 11. Declaratory Rulings

§1101. Purpose

This Chapter establishes procedures for issuance of declaratory rulings by the Department of Environmental Quality on significant matters when a request for a declaratory ruling has been received by the administrative authority. All requests for declaratory rulings shall be governed by the Louisiana Environmental Quality Act (in particular, R.S. 30:2050.10), the Administrative Procedure Act (in particular, R.S. 49:962), and this Chapter. This Chapter also establishes procedures for related matters such as, but not limited to, appeals related to declaratory rulings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

§1103. Definitions

The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular section:

Administrative Authority—the secretary of the Department of Environmental Quality, or his or her designee.

Administrative Record—any and all documents, testimony, records, files, or materials submitted to the administrative authority or compiled by the administrative authority concerning a request for a declaratory ruling or a declaratory ruling.

Aggrieved Person—person who has a real and actual interest that is or might be adversely affected by the agency action upon which a declaratory ruling is sought.

Declaratory Ruling—a final agency action in writing, identified as a declaratory ruling, and issued by the department with respect to one or more of the following:

- a. the validity of a rule; or
- b. the applicability of any rule, order, or statute to any person, property, or existing state of facts or facts certain to arise.

Declaratory Rulings Clerk—the person who, directly or through his/her designee(s), maintains custody of and receives filings to the records of declaratory rulings.

Declaratory Rulings Officer—the secretary or a delegated assistant secretary responsible for issuing a declaratory ruling.

Department—the Louisiana Department of Environmental Quality.

Intervener—an aggrieved person to whom intervener status is granted by the declaratory rulings officer under LAC 33:I.1133.

Party—the department, a petitioner, or an intervener.

Petitioner—any person who formally requests a declaratory ruling in accordance with this Chapter.

Pleading—a petition, motion, response, request, or any statement of position filed with the declaratory rulings clerk in connection with a request for a declaratory ruling or a declaratory ruling.

Secretary—the secretary of the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

§1105. Severability

If any provision of these rules, or the application thereof, is held to be invalid, the remaining provisions of these rules shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

§1107. Conflicts

Except as otherwise required by statutory law, this Chapter shall exclusively govern procedures for the department's issuance of declaratory rulings on significant matters, and this Chapter supersedes all rules in conflict herewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

§1109. Declaratory Rulings Officer

A. Unless otherwise provided by the secretary in writing, all declaratory rulings shall be issued by the secretary. The secretary may delegate the authority to issue declaratory rulings to the various assistant secretaries.

B. The secretary or designated assistant secretary, when issuing a declaratory ruling, shall be referred to as the declaratory rulings officer.

C. The declaratory rulings officer shall have the authority to regulate all matters concerning a request for declaratory ruling and to issue the declaratory ruling after concurrence as to legal sufficiency by the assistant secretary for the Office of Legal Affairs and Enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

§1111. Duty to Maintain List

The secretary shall maintain, in a place accessible to the public in the Office of Legal Affairs and Enforcement, a list of all petitions for declaratory rulings and declaratory rulings and an index to the list. The list shall identify the petitioner, the matter to be decided, and when applicable, the location of the activity or facility that is the subject of the petition. The list shall also include the date on which the petition is received, the date the secretary decides whether a declaratory ruling will be issued, the date the secretary sets for issuance of the ruling, the date the ruling issues, and the date of any request for modification or appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1141 (September 1997).

§1113. Declaratory Rulings Clerk

A. The administrative authority shall designate a person in the Office of Legal Affairs and Enforcement to serve as the declaratory rulings clerk, who shall be the official custodian of declaratory rulings records. The clerk shall maintain these records separately from other records of the department.

B. The declaratory rulings clerk, or his/her designee, is authorized to:

1. certify copies of official documents in his/her custody;
2. ensure distribution of all decisions and notices issued by the declaratory rulings officer;
3. receive all filings of petitions, rulings, and other pleadings or documents;
4. maintain a list of petitions for declaratory rulings and declaratory rulings and an index to the list in a place accessible to the public; and
5. perform other duties as assigned by the declaratory rulings officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997).

§1115. Requests for Declaratory Rulings in Accordance with R.S. 30:2050.10

A valid request for issuance of a declaratory ruling is made by filing a written petition in accordance with LAC 33:I.1117 and 1137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997).

§1117. Petition Contents and Form

A. A petition requesting issuance of a declaratory ruling shall be in writing and shall contain the following information:

1. the name, address, and telephone number of the petitioner and whether the petitioner is a permittee;
2. identification of the specific rule or statute in question;
3. the exact question presented to the department for ruling;
4. a concise statement of all particular facts necessary and sufficient to accomplish the following:
 - a. to show the nature of the controversy or uncertainty and the manner in which the rule or statute on which the declaratory ruling is sought applies or potentially applies to petitioner; and
 - b. to answer the question presented to the department for ruling;
5. a statement identifying all other rules, statutes, orders, or statements (formal or informal) from officials, employees, or agents of any local, state, or federal government agency that are relevant to the question presented by the petitioner;

6. a statement of the reasons for submitting the petition, including a full disclosure of the petitioner's interest in obtaining the declaratory ruling;

7. a statement as to whether the question presented by the petitioner is presently pending before or under consideration by the department or any other administrative, legislative, or adjudicative body;

8. a statement as to whether the petitioner has some other adequate legal remedy that will terminate the controversy or remove any uncertainty as to the applicability to petitioner or the circumstances cited of the rule, order, or statute in question; and

9. an affidavit that verifies the facts stated in the petition are true and correctly stated, and the verification is based upon the documents attached to or identified in the petition or based upon the affiant's personal knowledge.

B. A petition for declaratory ruling shall be filed with the Office of Legal Affairs and Enforcement by either of the following methods:

1. personal delivery to the assistant secretary for the Office of Legal Affairs and Enforcement or the declaratory rulings clerk at department headquarters, Fourth Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810; or

2. United States Mail as certified mail, return receipt requested to Declaratory Rulings Clerk, Office of Legal Affairs and Enforcement, Box 82282, Baton Rouge, LA 70884-2282.

C. A petition for declaratory ruling may be accompanied by a memorandum that urges the department to issue a declaratory ruling of specified content. Such memorandum should contain the arguments therefor and any relevant authorities in support thereof. No memorandum shall exceed 25 pages in length, exclusive of any cover pages, tables of contents, indexes of authorities, and exhibits.

D. In addition to these requirements, a petition must meet the requirements of LAC 33:I.1137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997).

§1119. Disposition of Petition

A. After determining whether any circumstances exist that preclude the issuance of a declaratory ruling under LAC 33:I.1121, the department shall, not later than 60 days after receipt of the petition, either:

1. issue a declaratory ruling;
2. deny the request for a declaratory ruling;
3. grant the request for a declaratory ruling and set a time within which the ruling will be issued; or
4. fail to respond to the petition, in which case the department's failure to respond shall be deemed to be a denial of the request for a ruling as well as a denial of the merits of the request.

B. All declaratory rulings and written denials of the requests for declaratory rulings issued by the department shall contain an explanation of the relevant facts and conclusions that served as the basis for the ruling or the denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1142 (September 1997).

§1121. Circumstances in Which Declaratory Rulings May Not Be Issued

Circumstances in which declaratory rulings may not be issued include, but are not necessarily limited to:

1. lack of jurisdiction;
2. lack of clarity concerning the question presented;
3. the existence of pending or imminent litigation or administrative action or adjudication that may either answer the question presented by the petition or otherwise make an answer unnecessary;
4. the petition involves a subject, question, or issue that is the subject of a formal or informal matter or investigation currently pending before the department, a court, or other government agency;
5. the statute, rule, or order on which a declaratory ruling is sought is clear and not in need of interpretation to answer the question presented by the petition;
6. the facts presented in the petition are not sufficient to answer the question presented;
7. the petition fails to contain any of the information required by LAC 33:I.1117 or 1137;
8. the petitioner is not aggrieved by the rule or statute on which a declaratory ruling is sought;
9. the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion; or
10. the question presented by the petition concerns the validity or constitutionality of a statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

§1123. Stay of Action

The filing of a request for declaratory ruling shall not automatically stay any other department action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

§1125. Declaratory Rulings Initiated by the Secretary and Modification of Rulings

A. The secretary may issue a declaratory ruling setting forth the department's position with respect to any matter within its jurisdiction or authority or describing proposed agency action.

B. The declaratory rulings clerk shall give the petitioner whose declaratory ruling has been reversed or modified notice by certified mail return receipt of the reversal or modification.

C. The declaratory rulings clerk shall mail or hand deliver to any intervenor a copy of the reversal or modification when issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

§1127. Effect of Declaratory Rulings

A. A declaratory ruling is not binding on the department except as to the parties and does not constitute a rule as defined in R.S. 49:951 nor does its issuance require "rulemaking" as defined in R.S. 49:951.

B. A declaratory ruling may be used by the petitioner as a defense in any enforcement proceeding brought by the department after the issuance of the ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

§1129. Docket Number

At the time a request for issuance of a declaratory ruling is filed, it shall be assigned a docket number by the declaratory rulings clerk. The docket number shall be used on all subsequent documents filed in the matter. The fact that a request for declaratory ruling is docketed does not constitute a determination as to whether the request is granted nor as to its sufficiency or validity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

§1131. Parties

A. Parties in declaratory ruling proceedings may include:

1. the petitioner; and
2. an intervenor.

B. Parties shall have the right to retain counsel to represent them, but shall not be required to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

§1133. Intervention

A. An aggrieved person has the right to intervene as a party in a declaratory ruling, provided the proper petition for intervention is filed at least 15 days prior to the declaratory ruling and such intervention is not likely to create an undue broadening of the issues or otherwise unduly impede the resolution of the matter.

B. If more than one person or entity with the same or similar interests seeks to intervene, the declaratory rulings officer may limit participation to designated representatives.

C. A petition for intervention shall comply with the requirements of LAC 33:I.1137 and shall also state all facts necessary to demonstrate that the intervenor is an aggrieved person, including but not limited to, all facts necessary to demonstrate its position, and the manner in which the rule, statute, or order in question does or does not apply to the intervenor.

D. A petition for intervention must be accompanied by an affidavit that verifies the facts stated in the petition are true and correctly stated and the verification is based upon the affiant's personal knowledge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1143 (September 1997).

§1135. Consolidation and Separation of Petitions

A. When two or more petitions for declaratory ruling involve a common issue or issues of law or fact, they may be consolidated and considered as a single petition. In such cases all petitions shall be docketed under the lowest docket number.

B. Petitions may be separated to simplify the proceedings or to permit a more orderly disposition of the matters consolidated with .

AUTHORITY NOTE: Promulgated in accordance R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

§1137. Pleadings: Form and Content

A. Pleadings shall:

1. state the name, mailing address, and telephone number of the person causing the pleading to be filed. In instances where the person filing a pleading is represented by another person, that person's name, address, and telephone number shall be included in the pleading;

2. be legibly written in ink, typewritten, or printed with one-inch top, bottom, and side margins, and shall be on strong durable white paper, no larger than 8½ by 11 inches;

3. be double-spaced, have its pages numbered, and if customary, be divided into separate numbered paragraphs;

4. state clearly, concisely, and particularly all relevant facts that give rise to and support the relief sought;

5. when appropriate, identify any statute, rule, written statement of law or policy, decision, order, permit, license, or any other regulatory mechanism and the particular aspect of each upon which the pleading relies;

6. state clearly and concisely the relief or action sought;

7. be signed in ink by the party filing same or by his/her duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he or she has read the document and that, to the best of his/her knowledge, information, and belief, every statement contained in the document is true; and

8. certify that a copy of the pleading or document has been mailed or hand delivered, on or before the date it is filed with the declaratory rulings clerk, to all parties.

B. The heading shall be similar in format to and shall include the information contained in LAC 33:I.331.B.

C. Failure to comply with this Section shall not invalidate the pleadings, but may be grounds for denial of the request for issuance of a declaratory ruling. The declaratory rulings officer shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment or supplementation of any pleading, or to take such other action as may be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

§1139. Filing of Pleadings and Documents

A. Any pleading, document, or other item that is being filed into the record maintained by the declaratory rulings clerk shall be filed by mail or hand delivery to the clerk.

B. All pleadings, documents, or other items shall be deemed filed on the date received by the declaratory rulings clerk.

C. An original and one copy of all pleadings and documents shall be filed unless otherwise specifically provided by a particular regulation or by order of the declaratory rulings officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

§1141. Computation of Time

In computing any period of time prescribed or allowed in this Chapter or the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the date of the act or event after which the period begins to run shall not be included.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

§1143. Discovery

No discovery is allowed by or between the parties to proceedings concerning a petition for declaratory ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

§1145. Judicial Review

A party seeking judicial review of a declaratory ruling shall comply with R.S. 30:2050.21.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10, 2050.21.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

§1147. Termination of Proceedings

Issuance of a ruling or unconditional withdrawal of the request for a ruling terminates the proceedings related to a request or petition for declaratory ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

§1149. Entry and Notice of Rulings

A. Entry. The original of any declaratory ruling or order issued shall be filed with the declaratory rulings clerk who shall notify all parties of the decision or order.

B. Notice

1. When a declaratory rulings officer issues, reverses, or modifies a declaratory ruling, a copy shall be served by certified mail return receipt requested upon the petitioner.

2. The declaratory rulings clerk shall also mail or deliver a copy of the ruling to any intervener and to any person who has on file with the declaratory rulings clerk a

written request for notice that includes the information necessary to receive notice (including requester's name and address and the matter(s) about which requester desires notice).

3. Declaratory rulings or a summary of rulings shall be published in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.10 and 30:2050.23.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 23:1144 (September 1997).

Herman Robinson
Assistant Secretary

9709#043

RULE

**Department of Environmental Quality
Office of Waste Services
Solid Waste Division**

**Municipal Solid Waste Landfills
(LAC 33:VII.115 and 315)(SW025)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste Division regulations, LAC 33:VII.115 and 315 (SW025).

The Solid Waste Division incorporates the definition of municipal solid waste landfill or MSW landfill found in 40 CFR part 60, subparts Cc and WWW into LAC 33:VII.115, as well as notifying municipal solid waste (MSW) landfill owners/operators of additional requirements needed to fulfill 40 CFR part 60, subparts Cc and WWW. This action is required to adjust the language in the solid waste regulations in response to new standards promulgated by the U.S. EPA.

This 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 VII. Solid Waste
Subpart 1. Solid Waste**

Chapter 1. General Provisions and Definitions

§115. Definitions

For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless the context of use clearly indicates otherwise.

[See Prior Text]

Municipal Solid Waste Landfill or *MSW Landfill*—an entire disposal facility in a contiguous geographical space where residential solid waste or commercial solid waste is placed in or on land.

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997).

Chapter 3. Scope and Mandatory Provisions of the Program

§315. Mandatory Provisions

All persons conducting activities regulated under these regulations shall comply with the following provisions:

[See Prior Text in A - G.9]

10. Municipal solid waste landfills that commenced construction, reconstruction, or modification or began accepting waste on or after May 30, 1991, are subject to 40 CFR part 60, subpart WWW - Standards of Performance for Municipal Solid Waste Landfills. Described landfills may be required to have an operating permit from the Air Quality Division of the department.

11. Municipal solid waste landfills that accepted waste on or after November 8, 1987, or for which construction, reconstruction, or modification was commenced before May 30, 1991, may be subject to 40 CFR part 60, subpart Cc - Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. Described landfills may be required to have an operating permit from the Air Quality Division of the department.

[See Prior Text in H - R.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997).

H.M. Strong
Assistant Secretary

9709#038

RULE

**Firefighters' Pension and Relief Fund
City of New Orleans and Vicinity**

Deferred Retirement Option Plan (DROP)

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity (the "fund"), pursuant to R.S. 11:3363(F), has amended rules and regulations for participation in the Deferred Retirement Option Plan, in accordance with the provisions of R.S. 11:3385.1.

Participation in the Deferred Retirement Option Plan

A. - C.10. ...

11. A member may terminate his participation in the DROP to be effective as of the last day of any calendar month

prior to the end of the maximum three-year period by filing with the Board of Trustees of the Fund a DROP withdrawal application, providing the DROP withdrawal application is submitted to the board no later than the last day of the previous calendar month. Nevertheless, in the event the board determines based on all facts and circumstances at issue that justice so requires and equity so warrants, the board shall be fully authorized, entirely in its discretion, to approve termination of a firefighter's participation in the DROP effective upon a date earlier or later than would otherwise apply.

12. - 21(c) ...
D. - F.3. ...

William M. Carrouché
President

9709#002

RULE

Office of the Governor Office of Elderly Affairs

State Plan on Aging (LAC 4:VII.1301-1323)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Governor's Office of Elderly Affairs (GOEA) repeals LAC 4:VII.1031-1321, and promulgates LAC 4:VII.1301-1323, in order to adopt the FY 1998-1999 State Plan on Aging, effective October 1, 1997 to September 30, 1999.

The full text of this rule may be obtained by contacting the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802, telephone (504) 342-5015.

Larry Kinlaw
Appointing Authority

9709#082

RULE

Department of Health and Hospitals Board of Medical Examiners

Medications Used in the Treatment of Obesity (LAC 46:XLV.6903 and 6907)

In accordance with R.S. 49:950 et seq., the State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:1270(A)(1), (B)(6) and 37:1285(B), and the provisions of the Administrative Procedure Act, has amended its rules governing the prescription, dispensation, and administration of medications used in the treatment of obesity, LAC 46:XLV.6903 and 6907, to eliminate application of the durational limits on prescribing Schedule IV anorectic medications. The rule amendments are set forth below.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Profession Subpart III. Practice

Chapter 69. Prescription, Dispensation, and Administration of Medications

Subchapter A. Medications Used in the Treatment of Obesity

§6903. Definitions

As used in this Subchapter, the following terms shall have the meanings specified:

* * *

Schedule IV Anorectic—fenfluramine, dexfenfluramine, phentermine, diethylpropion, mazindol and any other substance now or hereafter classified as a Schedule IV controlled substance under and pursuant to federal DEA regulations, 21 C.F.R. §1308.14 and which is indicated for use in the treatment of exogenous obesity by express approval of the FDA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:744 (July 1992), amended LR 23:1146 (September 1997).

§6907. Use of Schedule III-IV Anorectics; Conditions; Limitations

A. General Conditions. A physician shall not prescribe, dispense, or administer a Schedule III or Schedule IV anorectic for the purpose of weight reduction or control in the treatment of obesity, except as an adjunct to a therapeutic regimen of weight reduction based on prescribed sound nutrition, caloric restriction, exercise, and behavior modification and otherwise in accordance with the FDA-approved indications for the medication and contraindications for unapproved combinations of anorectic agents. Schedule III-IV anorectics may be prescribed, dispensed, or administered only to an adult patient who is obese under recognized generally accepted criteria for determining obesity, whose obesity is exogenous and not primarily metabolic, who is not pregnant, who does not suffer from or have any disease or condition constituting a recognized contraindication for use of the substance, and who otherwise satisfies the conditions requisite to treatment with anorectics as prescribed by this Section.

* * *

E. Limitations on Use. A physician shall not prescribe or dispense Schedule III or IV anorectics to any patient:

1. in dosage greater than the maximum dosage indicated by the anorectic manufacturer's FDA-approved dosage recommendation;

2. in number or dosage units greater than an amount sufficient for use of the anorectic for a period of 30 days; or

3. for an aggregate period in excess of 12 weeks during any 12-month period; provided, however, that this limitation shall not be applicable with respect to Schedule IV anorectics.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:744 (July 1992), amended LR 23:1146 (September 1997).

Delmar Rorison
Executive Director

9709#028

RULE

Department of Health and Hospitals Board of Veterinary Medicine

Continuing Veterinary Education (LAC 46:LXXXV.403 and 405)

The Board of Veterinary Medicine amends LAC 46:LXXXV.403 and 405 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 4. Continuing Veterinary Education

§403. Continuing Veterinary Education Requirements

A. A minimum 16 actual hours is required each fiscal year (July 1 through June 30) as a prerequisite for licensure. Hours may be taken from:

1. any pre-approved organization as described in §409;
2. a maximum of four hours of credit may be obtained in approved videotape, self-test program(s) with third-party grading, and/or self-help instruction, including on-line instruction with third-party grading;
3. a maximum of four hours of practice management courses may be taken.

B. Proof of attendance, which shall include the name of the course, date(s) of attendance, hours attended, and specific subjects attended, shall be attached to the annual re-registration form.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated as §405 by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1427 (November 1993), LR 23:1147 (September 1997).

§405. Exceptions and Exemptions

A. - B. ...

C. Exemptions from these requirements may be made for persons in the following categories:

1. ...
2. licensees who have returned a notarized affidavit of retirement as provided by the board for this purpose;
3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1428 (November 1993), LR 23:1147 (September 1997).

Charles B. Mann
Executive Director

9709#016

RULE

Department of Health and Hospitals Office for Citizens with Developmental Disabilities

Certification of Medication Attendants (LAC 48:IX.915 and 917)

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities is adopting the following revisions to LAC 48:IX.Chapter 9, Guidelines for Certification of Medication Attendants.

Title 48

PUBLIC HEALTH—GENERAL

Part IX. Mental Retardation/Developmental Services Chapter 9. Guidelines for Certification of Medication Attendants

§915. Certification Requirements and Process

A. Effective October 1, 1997, all CMA certificates will be issued for a certification period of October of one calendar year to October of the next calendar year. All certificates issued after October 1, 1997 will expire October 31, 1998.

1. - 9.c. ...

B. Recertification

1. Recertification requirements outlined in §917.A will be waived for existing CMAs for the first certification period of October to October.

2. Recertification requirements outlined in § 917.A will be required for the CMA to be recertified for each subsequent certification period of October to October.

3. All initial certification issued after October 1998 will expire in October of the certification period in effect.

4. Recertification requirements outlined in §917.A will be waived the first certification period of October to October.

5. Recertification requirements outlined in §917.A will be required for the CMA to be recertified for each subsequent certification period of October to October.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 21:696 (July 1995), amended LR 23:1147 (September 1997).

§917. Recertification Requirements and Process

A. ...

1. completion of a total of nine hours of in service training. Two of the nine hours must directly relate to the agency's medication administration policy and procedure. The remaining seven hours of in-service must relate to medication administration. A CMA working in multiple agencies may combine training to meet these requirements with the exception that the two-hour training on agency medication

administration policy and procedure is REQUIRED PER AGENCY EMPLOYED AS A CMA. Each agency must have documentation of each CMA's required nine hours of in service training;

A.2. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1021-1025.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 21:697 (July 1995), amended LR 23:1147 (September 1997).

Bobby P. Jindal
Secretary

9709#068

RULE

**Department of Health and Hospitals
Office of the Secretary**

**Maternal and Child Health Block
Grant Application—FY 1997-1998**

The Department of Health and Hospitals (DHH) is applying for Maternal and Child Health (MCH) Block Grant Federal Funding for FY 1997-98 in accordance with Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, and with federal regulations as set forth in the *Federal Register*, Volume 47, Number 129, Tuesday, July 6, 1982, pages 29472-29493.

DHH will continue to administer programs funded under the MCH Block Grant in accordance with provisions set forth in Public Law 97-35 and the federal regulations. The Office of Public Health is the office responsible for program administration of the grant.

Bobby P. Jindal
Secretary

9709#056

RULE

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

Home Health Services—Homebound Criteria

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the following rule under the Administrative Procedure Act, R.S. 49:950 et seq., and as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

Rule

The Bureau of Health Services Financing amends the following rule to clarify the homebound criteria for the provision of home health services to Medicaid recipients.

Homebound status is determined by the recipient's illness and functional limitations. A recipient is considered to be homebound if the individual:

- 1) experiences a normal inability to leave home; and
- 2) is unable to leave home without expending a considerable and taxing effort; and
- 3) whose absences from the home are either infrequent, of short duration, or to receive medical services which may be unavailable in the home setting such as outpatient kidney dialysis, outpatient chemotherapy, outpatient radiation therapy or minor surgical interventions.

Bobby P. Jindal
Secretary

9709#067

RULE

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

Hospital Program—Out-of-State Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts 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. The 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 increases reimbursement to out-of-state hospitals to 72 percent of billed charges for inpatient services provided to recipients under the age of 21.

Bobby P. Jindal
Secretary

9709#065

RULE

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

Reimbursement for Portable X-Ray Crossover Claims

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts 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 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 shall reimburse the full co-insurance and deductible on Medicare

Part B Portable X-Ray crossover claims for services rendered to dually eligible Medicare/Medicaid recipients.

Bobby P. Jindal
Secretary

9709#066

RULE

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

Standards for Payment for Adult Day Health Care (ADHC) Services (LAC 50:II.Chapter 109)

(Editor's Note: The following Chapter is being repromulgated in full, in correct *Louisiana Administrative Code* format. The only revision to the original rule, promulgated in the July 20, 1985 *Louisiana Register*, pages 623-637, is found in §10927.I.

This revision [amendment] was proposed through a notice of intent in the June 20, 1997 *Louisiana Register*, pages 820-821 [as §10939.I]. After proposal, it was discovered that original text in §10939 duplicated original text in §10927; therefore, the text in §10939, including the proposed amendment, has been moved to §10927, and replaces this Section's original [June 1985] text.

In addition, outdated terminology, primarily state and federal office/division program names and terms have been replaced with ones currently used in those levels of government.

The Department of Health and Hospitals has notified the Legislative Fiscal Office of these technical revisions to Chapter 109 and of its complete repromulgation in this issue of the *Louisiana Register*.

Full republication of this Chapter is at no charge to the Department of Health and Hospitals.)

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 109. Standards for Payment—Adult Day Health Care Services

§10901. Forward

A. These Standards for payment specify the requirements of the Adult Day Health Care (ADHC) Program. The program is funded as a waived service through Title XIX of the Social Security Act and is administrated by the Department of Health and Hospitals, Bureau of Health Services Financing, in conjunction with other state and local agencies.

B. These standards provide a center with information necessary to fulfill its vendor contract with the State of Louisiana and are the basis for federal and state reviews and surveys.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997).

§10903. Program Description

A. An Adult Day Health Care (ADHC) program provides direct care for five or more hours in a 24-hour weekday to individuals who are physically and/or mentally impaired. The

target group is those individuals who need direct professional medical supervision or personal care supervision. It shall be a requirement for program eligibility that such individuals would require intermediate care or skilled nursing services were they not enrolled in an Adult Day Health Care center.

B. This program expands the array of services available to functionally-impaired individuals and helps bridge the gap between independence and institutionalization, allowing them to remain in their own homes and communities.

C. Adult Day Health Care Program Goals

1. Adult Day Health Care programs work toward the following goals:

a. to promote the individual's maximum level of independence;

b. to maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;

c. to restore and rehabilitate the individual to the highest possible level of functioning;

d. to provide support and education for families and other caregivers;

e. to foster socialization and peer interaction;

f. to serve as an integral part of the community services network and the long-term care continuum of services.

2. The long-range goal for all Adult Day Health Care participants shall be the delay or prevention of 24-hour care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997).

§10905. Definitions

Adult Day Health Care—a group program designed to meet the individual needs of functionally-impaired adults which is structured and comprehensive and which provides a variety of health, social and related support services in a protective setting. *Adult Day Care* and *Adult Day Health Care* are synonymous where they appear in this document.

Adult Day Health Care Centers—Act 705 of the 1984 Louisiana Legislative Session defines this as "any place owned or operated for profit or not for profit by a person, agency, corporation, institution or any other group wherein 10 or more functionally-impaired adults who are not related to the owner or operator of the center are received for a portion of the 24-hour day."

Applicant—an individual whose written application for Medicaid has been submitted to the agency but whose financial or medical eligibility has not yet been determined.

Attending Physician—refers to a physician, currently licensed by the Louisiana State Board of Medical Examiners, who is designated by the recipient or responsible party as responsible for the direction of the recipient's overall medical care.

BHSF—Bureau of Health Services Financing, the agency within DHH responsible for administering Title XIX (Medicaid) in Louisiana.

DHH—Department of Health and Hospitals, the state agency responsible for Title XIX (Medicaid) in Louisiana.

DHHS—The Department of Health and Human Services, the federal agency responsible for administering the Medicaid program.

Enrollment—to the act of registering a licensed and certified center provider into the computerized system for payment of eligible services under the Medical Assistance Program. Enrollment includes the execution of the provider agreement and assignment of the provider number used for payment.

FFP—Federal Financial Participation.

Functionally-Impaired Adults—those persons who are physically, mentally or socially impaired to the degree that they are in need of medical or personal supervision.

HCFA—Health Care Financing Administration, the organization within DHHS responsible for administering the Medicaid program.

HSS—Health Standards Section of the Bureau of Health Services Financing.

ICF—Intermediate Care Facility.

LTC—Long Term Care.

Medicaid—the medical assistance provided under the state plan approved under Title XIX of the Social Security Act.

Medicaid Management Information System—the computerized system which lists all providers eligible for participation in the Medical Assistance Program. This system is an organized method of payment for claims for all Title XIX services. It includes all Title XIX providers and all recipients.

Medical Assistance Program—the division within BHSF specifically responsible for administering Title XIX (Medicaid) in Louisiana.

PAS/RR—Pre-Admission Screening and Re-admission Review.

Participant—Title XIX applicant or recipient.

Recipient—an individual who has been found eligible for Title XIX benefits or vendor payments.

Responsible Party—the individual or group designated by the participant to handle finances or to be called in case of an emergency.

SNF—Skilled Nursing Facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997).

§10907. Licensure

A. In accordance with Public Act 705 of the 1984 Louisiana Legislative Session and federal regulations governing reimbursement for Title XIX services, enrolled Title XIX Adult Day Health Care centers shall be licensed by DHH. An application for this may be obtained by contacting the BHSF/HSS.

B. Such licensure shall be one of two standard for participate as a Title XIX provider. The second standards to participation is the execution of a provider agreement wherein a provider agrees to comply with Standards for

Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1150 (September 1997).

§10909. Provider Agreement

A. Each Adult Day Health Care center shall enter into a provider agreement with DHH to provide services through Title XIX. An application for enrollment may be obtained by contacting the Bureau of Health Services Financing, Long Term Care (LTC) Provider Enrollment Section.

B. If BHSF has documentation showing good cause (other than lack of funding), it may refuse to execute an agreement with a provider or may cancel an agreement with a certified center.

C. The effective date of the provider agreement shall be no earlier than the effective date the center becomes licensed.

D. The provider agreement shall be limited to one year from the effective date of the previous provider agreement.

E. The provider agrees:

1. to provide Adult Day Health Care services to aged and disabled adults who are admitted in accordance with the provider's admission policies;

2. to be licensed by the BHSF/HSS as meeting Louisiana licensure standards for payment for adult day health care centers;

3. not to request or accept payment from DHH, BHSF, unless the participant for whom payment is requested is receiving services as specified in the Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109;

4. that when a Title XIX recipient applies for admission to the center, the center shall apply for Adult Day Health Care Center vendor payments on behalf of that individual;

5. to notify the BHSF/HSS in writing, two weeks in advance of changes which would affect this agreement. No such changes shall be effected until written approval is given by BHSF. Information in the BHSF Provider Enrollment Form(s) PE-50 and ownership data shall be kept current with the understanding that the Provider Enrollment Form(s) and ownership data become a part of this contract and that each succeeding change in the Provider Enrollment Form constitutes an amendment to this contract and that failure to keep the information current constitutes a breach of the contract making it subject to immediate cancellation;

6. to allow each participant free choice of Medicaid service providers;

7. to have appropriate staff chart all medication and treatments administered to participants at the center;

8. to maintain adequate records which itemize all charges made to a participant or third party and to make these records available when requested by DHHS, DHH, BHSF, or any other state or federal agency responsible in any way for the administration of Title XIX or state funding for this service;

9. to accept, as payment in full, the amounts paid in accordance with established fees for services billed;

10. to have a center policy which all employees sign and which specifies that the center does not require or expect or accept tips for services by center employees;

11. to immediately notify the participant's attending physician and responsible relative of any emergency involving the participant;

12. to promptly (no later than 24 hours) notify the BHSF regional and parish offices, in writing, when a participant dies or is discharged from the center;

13. to have nursing staff certify to the receipt of prescribed medication by legible signature and agree to comply with all Louisiana law, rules and regulations regarding medication control and disbursement;

14. to immediately notify the BHSF parish office when the participant requests to see his/her BHSF worker;

15. to maintain and keep any records necessary to disclose the extent of services the center furnishes to Medicaid participants and to have such records available for inspection for three years following the end of each three-year waiver period;

16. upon request to furnish to DHH, DHHS, the comptroller general, or the Medicaid Fraud Control Unit, or their agents, any information maintained in §10909.E.15 and any information regarding payment claimed by or made to the center for furnishing services to Medicaid recipients;

17. to comply with disclosure of ownership and control information and disclosure of information on owners and other persons convicted of criminal offenses against the Medicaid program;

18. to operate the center in accordance with the Civil Rights Act of 1964 and its amendments:

a. this means that individuals are accepted and cared for and that all services and facilities (waiting rooms, toilets, dining room, and recreation rooms) are available to persons without regard to race, color, age, sex, or national origin;

b. also, public facilities are available to visitors without regard to race, color, age, sex, or national origin;

19. to submit a quarterly report on personnel to BHSF/HSS, and to notify appropriate personnel in that division when there is a change in the number of personnel in any classification or any other change that may affect the licensing status of the center;

20. to comply with the requirements of the Standards for Payment—Adult Day Health Care, LAC 50:II.Chapter 109, and state health and safety laws;

21. to submit a properly completed cost report within 90 days of the provider's fiscal year closing date. If the cost report is not submitted as required, a penalty of 5 percent of the total monthly payment for each month of noncompliance may be levied. The agency may grant one 30-day extension of the 90-day limit upon request of the provider after having shown just cause. This penalty may be increased by 5 percent for each succeeding month of noncompliance;

22. that if the provider has authorized a representative to enter into this agreement, the provider shall sign and provide DHH, BHSF a copy of an affidavit delegating the said person as agent and authorized representative;

23. that in the event DHH, BHSF determines certain costs which have been reimbursed to the provider pursuant to this or previous agreements are not allowable, DHH shall have the right to recoup and/or set off and/or withhold said amount from amounts due the provider under this agreement for costs that are allowed.

F. DHH agrees to make payment to the provider on behalf of eligible participants if the provider is enrolled as a Title XIX provider of adult day health care services. The provider will be paid an individual, prospectively-determined rate based on reasonable, allowable costs. This rate shall not exceed 80 percent of the current ICF II rate.

G. Both parties mutually agree:

1. that this contract shall be for one year and may be renewed and extended by DHH, BHSF, provided compliance is maintained by the provider with licensing standards for adult day health care centers and Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109, and any and all other rules and regulations governing adult day health centers;

2. that DHH, BHSF, will renew or extend this contract in a written notice to the provider. Such notice will state the terms and any further conditions for enrollment under which the contract is to be renewed and extended and each such notice shall be incorporated into and become a part of this contract;

3. that this agreement shall not be transferable or assignable;

4. that this agreement shall be performed in a manner consistent with the applicable provision of Title XIX of the Social Security Act and the provision of the Standards for Payment—Adult Day Health care Centers, LAC 50:II.Chapter 109, and licensing standards for adult day health care centers. Any future modifications or amendments to said Act or said standards shall likewise be binding on the parties hereto;

5. that any breach or violation of any provision of this agreement shall make this entire contract subject to immediate cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1150 (September 1997).

§10911. Interdisciplinary (ID) Team

A. The ID Team for each center shall be composed of at least the following individuals who may be consultants or center staff:

1. a social worker (MSW);
2. a registered nurse (RN) licensed to practice in Louisiana;
3. the participant;
4. at least one direct-care staff person from the center.

B. Responsibilities of ID Team

1. The RN and MSW members of the ID Team shall, at admission and at least yearly, assess each participant as specified in §10913.

2. The MSW shall, at admission, assess each participant's home situation to determine which services are

required to maintain the integrity of that setting to enable continued placement of the participant. BHSF Form ADHC-1 shall be used for this assessment.

a. This requirement is waived for three months after the implementation of these standards.

b. Annually, thereafter, the MSW shall evaluate the Social Services Designee's (SSD) on-site assessment of the participant's home situation.

3. The ID Team shall develop and update the care plan as specified in §§10915 and 10917.

4. The ID Team shall, at least quarterly, review and analyze incident reports as specified in §10935.

5. The RN consultant responsibilities also shall, at least, include:

a. a medication review for each participant at least monthly to determine the appropriateness of the medication regimen. Such a review shall also be done whenever there is a change in the medication regimen;

b. a monthly review of each participant's medication administration sheet to determine if medications are properly administered in the center;

c. supervision of the center's plan for self-administration of medication by participants;

d. health education for staff;

e. insuring that diagnoses are compiled into a central location in the participant's record and updated when there is a change.

C. The ID Team shall make appropriate referrals to other disciplines.

1. The services of physical or speech therapists are available through the Title XIX program and appropriate referrals shall be made when the functional capacity of the participant may be enhanced through provision of such services.

2. The ID Team shall make referrals as indicated to other disciplines and for any other service which would enhance the functional capacity of a participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:625 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1151 (September 1997).

§10913. ID Team Assessments

A. Assessments shall be completed prior to staffing.

B. The primary source of information shall be the participant.

1. Other information may be obtained with the participant's written permission, from family, social/medical agencies and other interested parties, unless the participant's rights have devolved as in §10923.E.

2. The MSW shall document efforts to involve the primary caretakers in the assessment process.

C. Assessments shall identify the participant's specific strengths, problems and needs particularly in the home, but also in the ADHC setting.

D. Assessments shall be recorded and each participant shall be reassessed at least annually by the MSW and the RN.

E. The Social Service Designee (SSD) of the center shall update the social work assessment on BHSF Form ADHC-1 at least quarterly, but whenever there is a significant change in the home setting which may precipitate 24-hour care.

1. Each update shall involve contact with the participant's primary caretakers.

2. At least annually, the SSD shall update the assessment as a result of a visit to the participant's home and contact with the primary caretakers in that setting.

F. The physician assessment shall be done annually. The BHSF Form 90-L shall be used for this assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:625 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1152 (September 1997).

§10915. Staffings

A. Staffings shall be conducted in a group meeting including the participant, at least one center staff member, and the ID team.

B. After initial assessment by the ID Team, each participant shall be individually staffed to develop a viable plan of care for the participant.

C. The participant is the primary source of information during staffing. In the event the requirements of §10923.E. have been met, the primary caretaker of the participant or responsible party in the home serves in this capacity.

D. A staffing for each participant shall be conducted at least quarterly, and whenever the recipient situation obsoletes more than 25 percent of the problems, goals or approaches in the care plan. It is not necessary to staff the participant when there is a simple change in the care plan, such as a minor change in medication or a minor change in the approach for a specific goal. In such cases, the ID Team member and center staff responsible for the goal/approach shall revise the plan and initial and date the change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:625 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1152 (September 1997).

§10917. Plan of Care

A. All services shall be provided according to the individual, written plan of care which is reviewed and updated as specified in §10915:

1. be a result of an interdisciplinary staffing in which the participant and direct care staff participate (See §10915);

2. be written in terminology which all center personnel can understand;

3. list the identified problems and needs of the participant for which intervention is indicated, as identified in assessments, progress notes and medical reports;

4. propose a reasonable, measurable short-term goal for each problem/need;

5. contain the necessary elements of the center's Self Administration of Medication Plan, if applicable;

6. use the strengths of the participant in developing approaches to problems;
7. specify the approaches to be used for each problem and that each approach is appropriate to effect positive change for that problem;
8. identify the staff member responsible for carrying out each approach;
9. project the resolution date or review date for each problem;
10. specify the frequency of each approach/service;
11. contain a sufficient explanation of why the participant would require 24-hour care were he/she not receiving ADHC services;
12. include the number of days and time of scheduled attendance each week;
13. include discharge as a goal;
14. be kept in the participant's record used by direct care staff.

B. At least 75 of the services contained in the care plan shall be from among those listed in §10921.C and in no event shall more than 25 percent be from §10921.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:625 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1152 (September 1997).

§10919. Progress Notes

A. Progress notes are ongoing assessments of the participant which enable staff to update the plan of care in a timely, effective manner. Each individual responsible for providing direct services shall record progress notes at least monthly.

B. All progress notes shall:

1. provide documentation that staff are carrying out the approaches in the care plan for which each is responsible;
2. record progress made and discuss whether or not the approaches in the care plan are working;
3. document delivery of any service identified on the care plan;
4. record any changes in the participant's medical condition, behavior or home situation which may indicate a need for a care plan change;
5. document that incident reports have been completed when appropriate;
6. be legibly signed and fully dated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:625 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1153 (September 1997).

§10921. Services to be Provided

A. The ultimate goal of all services provided is greater independence and community involvement to enable prevention or delay of 24-hour institutional care.

B. All nursing and social services shall be provided in accordance with acceptable professional practice standards for each discipline.

C. As a minimum, each center shall make available the following required services:

1. usage of reality orientation by all staff, as well as daily orientation classes;
 2. individualized training in the activities of daily living (toileting, grooming, etc.);
 3. interdisciplinary team staffing;
 4. health and nutrition counseling;
 5. professional social services as specified in §10911.B.2;
 6. an individualized exercise program;
 7. an individualized, goal-directed recreation program;
 8. health education classes;
 9. daily individualized health services to include at least nursing services that consist of:
 - a. monthly assessment of each participant's medication regimen to evaluate contraindications, the need for appropriate laboratory monitoring and referrals to the attending physician for such tests and the efficacy of the drugs prescribed;
 - b. monitoring of vital signs appropriate to the diagnosis and medication regimen of each participant but no less frequently than monthly;
 - c. administration of medications and treatments in accordance with physician orders and acceptable nursing practice standards;
 - d. a self administration of medication plan for the center which is individualized for each participant for whom it is indicated;
 - e. serving as a coordinator and advocate between the participant and medical resources, including the treating physician;
 10. individualized leisure skill development and education;
 11. one nutritionally balanced hot meal each day and two snacks. This service shall be provide in accordance with the nutritional needs of the participant. Liquids shall be available and easily accessible;
 12. intellectual and educational development opportunities (bookmobile, talking library, etc.);
 13. transportation to and from the center at the beginning and end of the program day.
- D. Only the following additional services and activities shall be reimbursed by BHSP:
1. field trips (intellectual and emotional stimulation);
 2. volunteer group visits (emotional stimulation);
 3. meal preparation (functional capacity);
 4. taping of oral histories (intellectual stimulation);
 5. participant interaction with volunteers other than those serving as staff in the center (emotional stimulation);
 6. bill paying and letter writing sessions (functional capacity stimulation);
 7. films at the center (intellectual stimulation);
 8. sing-a-longs (social interaction and stimulation);
 9. recording of nutritional intake (functional capacity);
 10. educational and recreational films (intellectual and emotional stimulation and functional capacity);
 11. educational lectures (functional capacity);

12. assistance with obtaining, utilizing and maintaining food stamps, grants and other economic stabilization activities;

13. transportation to and from social/medical services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:626 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1153 (September 1997).

§10923. Participant Rights

A. The staff of each center shall be trained to protect the rights of the participants.

B. Before or upon admission, or upon adoption of participant rights policies by the center, each participant shall be provided a copy of and explained the center's participant rights policy and any amendments.

C. Each participant shall acknowledge receipt of this document, in writing, and the acknowledgment shall be filed in the participant's record. If the participant signs with a mark or is mentally retarded, two witnesses shall be required. The mark shall be bracketed and identified as indicated below:

<u>HER (X) MARK</u>	_____
MARY JONES	WITNESS

	WITNESS

D. Participant rights shall include at least the following items:

1. Each participant shall be informed of his/her responsibilities to the center and of all rules governing participant conduct and behavior. The regulations of the center shall be fully explained.

2. If the center changes its participant rights policies, each participant shall acknowledge, in writing, receipt of the change and the acknowledgment shall be filed in the participant's records.

3. Each participant shall be informed, in writing, of all services available in the center. The charges for these services shall be specified when they are not covered in the center's basic Title XIX rate per day. Receipt of this information and any changes in it shall be acknowledged by the participant, in writing, and the acknowledgment shall be filed in the participant's record.

4. Each participant shall be provided the opportunity to participate in each interdisciplinary staffing meeting and any other meeting involving the care of the participant.

5. Each participant shall be afforded the opportunity to refuse any service provided in the center.

6. Each participant shall give informed, written consent before participating in experimental research or any studies conducted at the center.

7. Each participant shall be encouraged and assisted to exercise his/her rights as a participant at the center and as a citizen.

8. Each participant shall be allowed to submit complaints or recommendations about the policies and services of the center to staff or to outside representatives.

Participants shall be allowed to do this free from restraint, interference, coercion, discrimination or reprisal.

9. Each participant shall be free from mental and physical abuse.

10. Each participant shall be free from physical restraint.

a. Physical restraint shall be used only when ordered by the attending physician.

b. The physician's order for restraint shall be filed in the participant's record, specify the reason for using restraint and include a specific time frame for using restraint.

c. Participants who are mechanically restrained shall be monitored at least every 30 minutes to insure that circulation is not impaired and that positioning is comfortable.

d. Participants being mechanically restrained shall be released and be provided the opportunity for exercise at least every two hours; center staff shall document this activity each time the participant is released.

e. Physical restraint may be used without a physician's order in an emergency only under the following conditions:

i. use of restraint is necessary to protect the participant from injuring himself/herself or others;

ii. the use of restraint is authorized by the individual who is identified in the written policies and procedures as having the authority to do so;

iii. use of restraint is reported at once to the attending physician by the staff person referred to in §10923.D.10.e.ii.

11. Each participant shall be treated with consideration, respect and full recognition of his or her dignity and individuality.

12. Each participant shall be afforded privacy during the provision of personal needs services.

13. No participant shall be required to perform services for the center. This shall be allowed by the center only when a specific service is identified in the plan of care as an appropriate approach to a need or problem of the participant.

14. Each participant shall be allowed to communicate, associate, and meet privately with individuals of his/her choice, unless this infringes on the rights of another participant.

E. Development of Participant Rights. Under the following conditions, the center shall insure that participant rights devolve to the responsible party, next of kin or sponsoring agency. If the participant rights have devolved to the responsible party, next of kin or sponsoring agency, that party shall receive the explanation of and sign the participant rights and any other documents described in these standards.

1. The participant has been interdicted in a court of law. In such cases, the center shall insure that the participant's rights devolve to the curator/curatrix of record and that the interdiction is documented on the inside front cover of the participant's record. The center shall have an official document verifying the participant has indeed been interdicted.

2. The participant's attending physician signs a statement at least quarterly that the participant is unable to exercise his/her Title XIX Participant Rights because of a specific medical diagnosis. In such cases, the center shall

insure that participant rights devolve to the responsible party of record (Form 90-L).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:626 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1154 (September 1997).

§10925. Eligibility Criteria for Adult Day Health Care Certification

A. The individual must meet the level of care criteria for SNF, ICF I or ICF II care found in LAC 50:II.Chapter 109, Standards for Payment for Adult Day Health Care Services.

B. It must be determined by BHSF at admission and during UR that the individual's home setting would not suffice as a placement unless ADHC services were being provided.

C. It must be determined by BHSF at admission and during UR that health and other services will be provided according to an approved written plan of care.

D. The individual must meet categorically-related eligibility requirements as specified in Title XIX of the Social Security Act.

E. No recipient of medically needy benefits shall be simultaneously eligible for adult day health care services, since these individuals are not eligible for long term care services. Recipients of inpatient hospital, ICF I, ICF II or ICF/H, or SNF services shall not be simultaneously eligible for ADHC services.

F. An individual who has not attended a center for 14 consecutive calendar days or more shall not be eligible for ADHC services. An exception to this is the individual who is absent from the center because of hospitalization or an illness which is documented in the center's records.

G. After an individual has been absent 14 consecutive calendar days, the center shall, within 24 hours, notify both the parish and regional BHSF offices by BHSF Form 148.

H. For patient liability information see §10927 and Title XIX of the Social Security Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:627 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1155 (September 1997).

§10927. BHSF Admission Assessment/ Vendor Payment

(Editor's Note: Text in this Section, originally promulgated in June, 1985 duplicated the text found in §10939, Vendor Payments; therefore, the text in §10939 is being repromulgated, along with the amended portion, proposed in a notice of intent, June, 1997 in this §10927.

A. Vendor payment shall only be made by DHH in accordance with the terms of each provider agreement (See §10909).

B. Vendor payment shall not be made retroactively prior to the date each participant is staffed and a current, adequate care plan developed.

C. Vendor payment for service days for a participant shall be limited to 23 days per month.

D. Vendor payment for services provided is dependent upon the quality of services provided and each center's

compliance with the Standards for Payment—Adult Day Health Care Centers LAC 50:II.Chapter 109 (See §10947, Compliance with Standards for Payment).

E. Vendor payment shall be limited to those days the participant receives services on-site for five or more hours as documented by center attendance records. Exceptions to attendance for the full day or major fraction thereof shall be for medical appointments, onset of illness after arrival at the adult day health care center, and unexpected emergencies such as a death in the family or acts of God.

F. DHH may withhold vendor payments in whole or in part in the following situation:

1. Change in Center Status. A minimum of 10 percent of the final vendor payment due a center may be withheld pending completion of an audit. The following are situations which shall warrant 10 percent withholding:

a. a change of ownership;

b. a center voluntarily ceases to participate in Title XIX;

c. a center is decertified for Title XIX;

d. a center's license is revoked or not renewed;

e. a center's provider enrollment agreement is canceled.

2. Incorrect or Inappropriate Charges to Participants. When DHH determines that a center has violated a provider agreement by incorrectly or inappropriately charging a participant or responsible party, a sum not to exceed the inappropriate charges shall be withheld until the provider:

a. makes restitution to the participant or responsible party;

b. submits evidence of restitution to BHSF and the fiscal intermediary.

3. Delinquent Cost Report

a. When a center fails to submit a properly completed cost report within 90 days of its accounting period or fiscal year end, a penalty of 5 percent of each total monthly payment shall be withheld until the properly completed cost report is submitted.

b. DHH may grant one extension, not to exceed 30 days, of the 90-day limit if evidence of just cause has been provided and established in writing.

c. The 5 percent penalty may be increased by 5 percent each month if the provider does not demonstrate good faith in producing a properly completed cost report.

G. Deferral or Disallowance of FFP

1. Should HCFA defer or disallow FFP to the state for one or more adult day health care center's deficiencies, lack of compliance with waiver provisions, fraud or other reasons identified by HCFA, the state shall defer or disallow the sums involved by withholding and/or recoupment from the adult day health care centers involved.

2. Should HCFA restore in whole or in part to DHH, BHSF the amounts deferred or disallowed, DHH, BHSF shall restore the appropriate amount to the provider.

H. Termination of the Waiver

1. Should HCFA terminate the waiver under which the Adult Day Health Care Program is operated, DHH shall notify each participating provider and, after receipt of such notice, no further reimbursement will be made.

2. If the state chooses to totally fund adult day health care services, reimbursement for services may be made as provided by the state.

I. Medical Eligibility Determination Requirements for Vendor Payment

1. The adult day health care provider must submit a complete admissions packet to Health Standards Section within 20 working days of the date of admission.

a. The date of admission or the date of the plan of care, whichever is later, is the effective date of certification. If the admission packet is incomplete, Health Standards Section will issue a denial of certification notice indicating the reason(s) for denial.

b. If the missing information is subsequently received within the 20-day time frame and the applicant meets all eligibility criteria, certification shall be issued retroactive to the date of admission.

c. If the missing information is received after the 20-day time frame and the applicant meets all eligibility criteria, certification shall be issued with an effective date no earlier than the date that all required documents were received by the Health Standards Section.

2. A complete admission packet must contain the following forms:

a. Form 148 which includes the date of Medicaid application if the date of application is later than the date of admission;

b. Form 90-L which:

i. is signed and dated by a physician licensed to practice in Louisiana and includes a level of care recommendation;

ii. is not completed more than 30 days prior to the date of admission or the date of application if the resident applies for Medicaid after admission.

c. Level I PAS/RR (Pre-admission Screening/ Re-admission Review):

i. signed and dated by a physician licensed to practice in Louisiana;

ii. if a second level screen is indicated due to a diagnosis or suspected diagnosis of mental illness or mental retardation, it must be completed prior to admission;

iii. diagnosis and medication on Form 90-L must be consistent with PAS/RR.

d. Adult Day Health Care Social Assessment (ADHC I) which:

i. shall not be completed more than 30 days prior to admission;

ii. is completed, signed and dated by a master's degreed social worker.

e. Adult Day Health Care Nursing Assessment (ADHC 2) which:

i. shall not be completed more than 30 days prior to admission;

ii. if completed by a licensed practical nurse, it must be countersigned by a registered nurse who must also provide recommendations if necessary;

f. plan of care:

i. shall not be completed more than 30 days prior to admission;

ii. shall include:

(a). problems and needs identified in the assessments;

(b). approaches/services to be used for each problem;

(c). discipline or job title of staff member responsible for each approach;

(d). frequency of each approach/service;

(e). review/resolution dates; and

(f). discharge as a goal.

Note that the diagnosis should not be used as a problem.

g. when an individual is presented with a psychiatric disorder, a psychiatric evaluation is required and includes the following components:

i. history of present illness;

ii. mental status;

iii. diagnostic impression;

iv. assessment of strengths and weaknesses;

v. recommendations for therapeutic interventions;

and

vi. prognosis;

h. when there is a diagnosis of mental retardation/developmental disability, a psychological evaluation is required and includes the following components:

i. intellectual quotient; and

ii. adaptive level functioning.

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§10941. Participant Records

A. General Requirements

1. Written Policies and Procedures. All centers shall have written policies and procedures governing access to, duplication of, and dissemination of information from the participant's personal and medical records.

2. Availability of Participant Records

a. The center shall make all necessary participant records available to appropriate state and federal personnel at all reasonable times.

b. Participant records shall include, but shall not be limited to, the following information:

i. all medical records;

ii. records of all treatments, drugs, and services for which vendor payments have been made, or which are to be made, under the Medical Assistance Program. This includes the authority for and the date of administration of such treatment, drugs or services;

iii. sufficient documentation to enable DHH to verify that each charge is due and proper prior to payment;

iv. the following physician information:

(a). certification for each participant admission;

and

(b). recertification that the participant requires ICF or SNF services;

iv. all records which DHH finds necessary to determine a center's compliance with any federal or state law, rule or regulation promulgated by DHHS or by DHH.

B. Records

1. General Requirements

a. Protection of Records. The center shall protect records against loss, damage, destruction, and unauthorized use.

b. Confidentiality of Information. The center shall safeguard the confidentiality of participant information and shall release confidential information only under the following conditions:

i. by court order; or

ii. by the participant's written authorization, unless contraindicated as documented in the participant's record by the attending physician.

c. Retention of Records. The center shall retain records for whichever of the following time frames is longer:

i. until records are audited and all audit questions are answered;

ii. three years from the end of the waiver period.

2. Components of Participant Records. The participant's medical record shall consist of the active participant's record and the center's storage files or folders.

a. Active Participant Records. The active medical charts shall contain the following information:

i. at least six months of current pertinent information relating to the participant's active ongoing care;

ii. the necessary admission records; and

iii. if the center is aware that a participant has been interdicted, a statement to this effect shall be noted on the inside front cover of the participant's active participant record.

Note: As this active record becomes bulky, the outdated information shall be removed and filed in the center's storage files or folders.

3. Availability of Participant Records to Center Staff. The center shall insure that participant records are available to staff directly involved with the participant's care.

4. Contents of Participant Medical Records

a. An organized active record system shall be maintained for each participant.

b. All entries made by center staff in participant records shall be legibly signed and fully dated.

c. Each record shall include the following information:

i. Identifying Information

(a). full name of the participant;

(b). home address, including street address, city, parish and state;

(c). Social Security number;

(d). Medicaid number;

(e). Medicare claim number, if applicable;

(f). marital status;

(g). date of birth;

(h). sex;

(i). religious preference;

(j). ethnic group;

(k). usual occupation (the kind of work the participant engaged in most of working life, even if retired);

(l). legal status;

(m). birthplace;

(n). father's name;

(o). mother's maiden name;

(p). dates of service in the United States armed forces, if applicable;

(q). personal physician and alternate;

(r). participant's choices of other service providers;

(s). name and address of next of kin or other responsible party;

(t). admitting diagnoses;

(u). any other useful identifying information.

ii. Medical Information. The center shall insure that the participant record contains the following information:

(a). the physician's signed and dated orders, including medication, treatment, diet, and restorative and special medical procedures required for the safety and well-being of the participant. Physician orders shall remain current for a period of one year;

(b). a comprehensive, interdisciplinary plan of care as required in §10917;

(c). progress notes as required in §10919;

(d). discharge plan and discharge (referral) summaries as required in §10933;

(e). current interdisciplinary assessments as required in §10913.

5. Any errors made by the staff in a participant's record shall be corrected using the legal method which is to draw a line through the erroneous information, write "error" by it and initial the correction.

C. Attendance Records

1. The center shall maintain, for no less than three years after the end of the waiver period, records of the dates of each participant's attendance and the number of hours attended each day.

2. Such records shall be kept in a central location.

D. All other records shall be maintained in accordance with the terms of the provider agreement (See §10909).

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§10929. Utilization Review (UR)

A. The BHSF regional offices shall conduct UR of each participant's need for continued ICF or SNF care at least annually.

B. For newly enrolled centers, the UR date shall be 12 months from the effective date of certification as a Title XIX provider.

C. For centers which have been previously reviewed, the UR date shall be 12 months from the date of the previous exit conference.

D. If at all possible, UR shall be conducted in conjunction with inspection of care.

E. The interval between UR exit conference dates shall not exceed 12 months.

F. Composition of UR Team

1. The UR Team shall be composed of at least one social worker and one registered nurse, both of whom conduct the on-site review.

2. The UR Team shall not include any individual who has a financial interest in or who is employed by any long term care provider.

3. The team leader may be either the RN or the social worker.

G. Center Responsibilities. See §10931 for the center's responsibilities during any review.

H. UR Team Responsibilities

1. If the UR is conducted in conjunction with an Inspection of Care, refer to §10931 for team responsibilities.

2. If the UR is conducted independently of the Inspection of Care, the UR Team has the following responsibilities:

a. If the team elects to notify the center of the review, this shall be done no more than 24 hours prior to the inspection. It is recommended that the center not be notified.

b. The team shall insure that it has a current list of all Title XIX eligibles and applicants receiving services from the center. This shall include participants for whom vendor payments to the center is not being made but who are eligible for Medicaid.

c. The team shall hold an entrance conference with the center director or designee which shall cover the following points:

- i. the purpose of the review;
- ii. the specific materials needed for review;
- iii. the expected duration of the review and whether the review may be interrupted by the team;
- iv. notification that an exit conference will be held at the conclusion of the review.

d. The team shall assess each participant's continued need for ICF or SNF services. Materials to be reviewed for this purpose shall include:

- i. a current (completed within 12 months) physician certification of the need for the specific level of care for which the participant is certified;
- ii. a current (completed within one year and reviewed and updated at least quarterly) plan of care which includes the information specified in §10917;
- iii. current (completed at least quarterly) social work assessments and updates;
- iv. other material needed to determine the need for continued stay at the certified level of care;
- v. the discharge plan.

e. The team shall determine if each Title XIX applicant or recipient continues to meet the criteria specified in §10921.

f. The team shall review time and attendance records to insure that no participant was absent for a period of 14 or more calendar days without the center fulfilling its responsibilities to notify BHSF parish and regional offices as specified in §10941. If the team finds that a participant was absent for a period of 14 or more calendar days, and the center did not fulfill its responsibilities to notify BHSF parish and regional offices, the center shall be cited.

g. If the team finds that the participant continues to meet those criteria, Form 51NH shall be issued assigning a review date 12 months from the date of the exit conference. The team shall sign and approve the current care plan.

h. If the team finds that a participant no longer meets the criteria in §10925, Form 142 shall be completed denying continued medical certification.

i. Item II.A. on Form 142 should be checked and completed as follows: "Medicaid payment will continue for above type services through the period of advance notice."

ii. Advance notice of closure and participant appeal rights shall be sent by the parish office when the vendor payment is closed.

iii. The center shall implement discharge of the participant during the effective period of the advance notice.

i. When a participant's record lacks sufficient or current data on which to base a determination, the center shall be cited in the Utilization Review Report.

j. Prior to the exit conference, the team shall compile a list of participants who no longer require ADHC services and a list of those participants for whom a determination could not be made.

k. An exit conference shall be held to provide a verbal report of the team's findings. The conference shall include at least:

- i. a description of the deficiencies identified during the review;
- ii. the names of those individuals found to no longer require ADHC services;
- iii. the names of those individuals for whom a determination could not be made;
- iv. that the information necessary to make a determination shall be forwarded to the regional office, within 25 days of the exit conference date, the medical certification of the participant shall be terminated.

l. If the requested material for utilization review is not received by the regional office within that time frame, under no circumstances is an ADHC recipient to remain certified for Title XIX for more than 30 days when the need for continued stay cannot be determined.

i. Form 142 shall be issued terminating medical certification.

ii. Item II.A. of Form 142 should be checked and completed as follows: "Medicaid payment will continue for above type services through the period of advance notice."

m. A review report shall be prepared whether or not deficiencies were identified during the utilization review. This report shall contain all of the information required by established DHH procedure and shall be submitted to the center within the time frame specified in that procedure.

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§10931. Inspection of Care

A. At least annually, each center with at least one Medicaid recipient or applicant participating shall be inspected.

1. If at all possible, this inspection shall be conducted in conjunction with UR.

2. If the team elects to notify the center of the review, this shall be done no more than 24 hours prior to the inspection.

3. It is recommended that the center not be notified.

4. DHH reserves the right to inspect any center at any time without prior notification.

B. Purpose of Inspection. Inspections of Care shall be conducted to determine if Medicaid recipients or applicants in Title XIX enrolled Adult Day Health Care centers are, in fact, receiving health, social, recreational, nursing and personal care services that:

1. are optimal in quality;
2. are adequate in quantity;
3. are sufficient in scope; and

2. are being provided in a timely manner under circumstances most favorable to the promotion of physical, social, emotional and functional well being of each Medicaid recipient.

C. Composition of Inspection Team. The team shall be composed as specified in §10929.F.

D. Frequency of Inspections

1. Each center shall be inspected at least annually; however, the frequency of inspections shall be based on the quality of care and services provided by a center as determined by state reviews and surveys and complaints investigated.

2. The quality of care determination by BHSF is based on the degree to which a center complies with:

- a. Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109;
- b. the fiscal integrity with which the center is administered; and
- c. Licensing Surveys.

E. Follow Up Reviews

1. When an Inspection of Care results in a determination that serious deficiencies exist in a center, a follow-up review shall be conducted between 15 and 45 days after the inspection to determine if adequate corrective action has been taken.

2. Inspection team responsibilities during a follow-up review are as outlined in §10931 except that:

- a. at least a 10 percent sample of Title XIX recipients and applicants shall be reviewed;
- b. only the areas in which the center was found deficient shall be reviewed.

3. Follow-up reviews are closely related to the imposition of sanctions (See §10927).

F. Center Responsibilities. The center shall cooperate in the review by:

1. promptly providing all necessary documents needed for review;
2. providing adequate space and privacy for the team to review records uninterrupted;
3. assisting with the identification and/or location of individual participants;
4. insuring that at least six months of current information is included in the active participant records,

except that physician certification or recertification documents and interdisciplinary team assessments shall remain on file for the period of their currency;

5. arranging for pertinent personnel to attend the exit conference.

G. Inspection Team Responsibilities

1. Prior to the inspection, the team shall review:

- a. all Licensing Surveys, Inspection of Care and UR reports from the previous calendar year;
- b. all complaints about the center investigated during the previous calendar year.

2. The team shall compile a current list of all Title XIX recipients and applicants, including those for whom vendor payment to the center is not being made.

3. The team shall hold an entrance conference. See §10929.H.2.c for details.

4. The social worker and RN shall each review the center record for each Title XIX participant. The team shall review at least the following items to assess the quality of care provided and to determine the need for continued stay:

- a. medical, social, nursing and any other assessments which identify the needs of the participants;
- b. the plan of care;
- c. interdisciplinary progress notes;
- d. physician orders;

e. the team shall review time and attendance records to insure that no participant was absent for a period of 14 or more calendar days without the center fulfilling its responsibilities to notify BHSF parish and regional offices as specified in §10941. If the team finds that a participant was absent for a period of 14 or more calendar days and the center did not fulfill its responsibilities to notify BHSF parish and regional offices, the center will be cited.

f. any other center records which provide documentation of compliance with Louisiana State Medicaid Standards.

For example: administrative records may contain contracts and correspondence with the participant and/or responsible party.

5. Documentation reviewed by the inspection team shall provide evidence that:

a. interdisciplinary team assessments are complete and have been completed within the previous calendar year, except for social assessments which also shall have been updated at least quarterly;

b. the plan of care meets the requirements of §10917;

c. the plan of care is being implemented and all services ordered on the plan of care are being rendered and properly recorded in interdisciplinary progress notes;

d. the attending physician has written orders and has certified or recertified the need for Edith ICF I, II or SNF care within the previous calendar year;

e. interdisciplinary progress notes meet the requirements of §10919;

f. interdisciplinary progress notes describe the condition of the participant as observed by the inspection team;

g. the participant has made progress toward goals in the plan of care (Otherwise, the plan of care is not viable.);

h. at least 75 percent of the participant's scheduled services are among those services specified in §10921.D;

i. each participant has a current, adequate discharge plan, (See §10933);

j. the ID Team has discharged its responsibilities as outlined in §10911.B;

k. the team shall determine if the center is in compliance with all requirements of Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109.

6. The social worker and RN shall interview each participant, the purpose of which shall be:

a. to document that the participant's condition is consistent with the description in the record;

b. to determine whether the participant is receiving services to support maximum physical, mental and psychosocial functioning;

c. to gather additional data, if needed, to make a level of care determination;

d. to provide the participant the opportunity to make recommendations or complaints about the quality of care provided in the center.

7. One of the members of the team shall review incident reports compiled by the center during the previous calendar year, the purpose of which is to determine that the requirements of §10935 have been met.

8. The team shall determine that each Title XIX recipient or applicant continues to meet the criteria specified in §10925.

9. If the team finds that the participant continues to meet those criteria, Form 51NH shall be issued assigning a review date, not to exceed 12 months from the date of the exit conference, for the current review.

10. If the team finds that a participant no longer meets the criteria specified in §10925, Form 142 shall be issued, no longer approving medical certification.

a. Item II.A. on Form 142 should be checked and completed as follows: "Medicaid payment will continue for above type services through the period of advance notice."

b. Advance notice of closure shall be sent by the parish office when the vendor payment is closed.

c. The center shall implement discharge of the participant during the effective period of the advance notice.

11. When a participant's record lacks sufficient or current data on which to base a determination, the center shall be cited in the Inspection of Care report.

12. The center shall be notified at the exit conference of the material necessary to make a medical ADHC eligibility determination and that if the requested materials are not received within 25 days, the participant shall be decertified.

a. Under no circumstances is an ADHC participant to remain certified for ICF or SNF for more than 30 days when medical eligibility has not been redetermined.

b. Advance notice of closure shall be sent when the case is closed by the parish office.

13. Prior to the exit conference, the team shall identify the areas in which the center was found deficient. This shall be based on:

a. a numerical compilation and analysis of the team's findings with regard to individual participants;

b. inspection of care and UR reports from the previous calendar year and the evidence of corrective action taken by the center with regard to those reports;

c. analysis of the center's incident reports and the complaints investigated in the center during the previous calendar year.

14. The team shall be prepared to provide at the exit conference the names of participants from whom immediate corrective action is indicated.

15. An exit conference shall be held to provide a verbal report of the team's findings.

a. This conference shall include at least the information required in §10929.H.2.j.

b. In addition, the team may also make professional recommendations to the center directed toward enhancing the quality of care provided. Such recommendations shall be clearly differentiated from deficiencies cited.

c. A center shall not be cited for a professional recommendation. However, a violation of professional practice standards constitutes a deficiency.

16. A review report of the team's findings shall be prepared whether or not any deficiencies were found or recommendations made.

17. Review reports shall contain all the information required by established DHH procedure and shall be submitted to the center within the time frames specified in that procedure. Copies shall be sent to the parties specified in the procedure.

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§10933. Discharge Planning and Implementation

A. The purpose of discharge planning:

1. is to provide continuity of services for participants who may be temporarily absent from or permanently discharged from the center;

2. also serves to document the need for continued stay at the certified level of care.

B. The center shall maintain:

1. a current register of resources to support a lower level of care. This shall include but not be limited to:

a. medical resources which address the needs of the community-based elderly/disabled population;

b. social resources which address the needs of this population;

c. financial resources which address the needs of this population;

d. any other supportive resource directed toward the community-based elderly/disabled population;

2. a current register of resources to support continued placement at the current level of care. This shall include but not be limited to medical/social/financial resources to support care at the ADHC level of care;

3. a current register of resources to support a more restrictive level of long term care. This shall include but is not limited to a current listing of:

a. Title XIX certified nursing homes within the community;

b. Title XVIII extended care facilities within the community;

c. any program which may further delay institutionalization;

4. a current register of medical/social acute care facilities which would meet the needs of participants who, because of acute medical problems, are temporarily unable to continue or achieve maximum potential in an ADHC center;

5. as part of an adequate discharge planning program, each center shall, to ensure continuity of services, prepare a discharge summary whenever a resource in §10933.B.1, 2, 3 or 4 is required. This summary shall at least include:

- a. medical diagnosis;
- b. medication regimen (current physician orders);
- c. treatment regimen (current physician orders);
- d. functional needs (inabilities);
- e. any special equipment (dentures, ambulatory aids, glasses, etc.);
- f. social needs;
- g. financial resources;
- h. any other information which will enable the receiving agency/center to provide continued necessary care without interruption.

C. The discharge policy of the center shall include the provision that any Title XIX participant who does not attend as scheduled for 14 consecutive calendar days (hospitalization and documented illness excepted), shall be discharged.

D. Voluntary Transfer. When a participant transfers between ADHC Centers, the centers have the following responsibilities:

1. Transferring center:

- a. update plan of care;
- b. complete Form 148 and forward to the BHSF regional and parish offices to notify of transfer;
- c. send updated care plan and current physician orders to receiving center.

2. Receiving center:

- a. complete Form 148 and forward to the BHSF regional and parish offices to notify that participant has been accepted for placement;
- b. assess and staff participant, and develop a new care plan within 14 days of actual attendance.

E. Involuntary Transfer or Discharge

1. Conditions of Transfer or Discharge. Involuntary transfer or discharge of a medical assistance participant may occur only under the following conditions:

- a. for medical reasons;
- b. for the participant's welfare or that of other participants; or
- c. for nonpayment of the center fee.

2. Center Responsibilities. Center responsibilities in insuring an orderly transfer/discharge shall include the following tasks:

a. Plan of Care. The center shall complete a final update of the participant's individual plan of care with the transfer/discharge in mind.

b. Notice of Transfer/Discharge

i. The center shall complete the final update of the participant's individual plan of care and the transfer/discharge plan before submitting a written notice of transfer/discharge to the following individuals:

- (a) the participant;
- (b) the participant's responsible party;
- (c) the BHSF regional office;
- (d) the BHSF parish office.

ii. The written notice of transfer/discharge shall contain the following information:

- (a) the proposed date of the transfer/discharge and reason(s) for the same;
- (b) a discharge conference, date, time and place;
- (c) the personnel available to assist in locating an appropriate placement;
- (d) the participant's right for personal and/or third-party representation at all stages of the transfer/discharge process;
- (e) the participant's right to appeal with the Bureau of Health Services Financing, Appeals Bureau, within three days after the transfer/discharge conference.

iii. The written notice of transfer/discharge shall be submitted as soon as possible but at least three actual days of attendance prior to the transfer/discharge conference.

c. Transfer/Discharge Conference

i. The center director, the ID Team, or a member of the ID Team shall meet with the participant and responsible party to discuss the transfer/discharge. The discussion shall be conducted within the following time frames to insure an orderly transfer process:

- (a) as soon as possible in advance of the transfer/discharge; but
- (b) at least 10 actual attendance days in advance.

ii. The participant's presence at the conference may be waived with a written statement from the attending physician detailing the medical contraindications to the participant's participation in such a meeting.

iii. The participant and the responsible party shall be notified at least 72 hours in advance of the conference and shall be invited to attend and participate.

iv. Among those items discussed at this conference shall be those enumerated in §10933.E.2.a and b.

F. Mass Transfer of Participants. The following provisions shall apply to any mass transfer.

1. Definitions

Mass Transfer—the intended relocation of more than 10 participants within a 30-day period.

2. Provider Enrollment Cancellation. When DHH determines that a center no longer meets State Title XIX requirements, the center's provider enrollment agreement is canceled.

3. Notice of Provider Enrollment Cancellation. On the date the center is notified that its provider agreement has been canceled, DHH shall immediately begin notifying the participants, their responsible parties and other appropriate agencies or individuals of this action and of the service available to insure an orderly transfer and continuity of care.

4. Center Closing or Withdrawing from Title XIX Program. In situations where a center either voluntarily or involuntarily discontinues its operations or participation in the Medical Assistance Program, participants, their responsible parties and other appropriate agencies or individuals shall be notified as far in advance of the effective date as possible to insure them an orderly transfer and continuity of care.

a. If the center is closing its operations, plans shall be made for transfer.

b. If the center is voluntarily withdrawing from Title XIX participation, the participant has the option of remaining in the center on a private pay basis.

5. Payment Limitation. Payments may continue for Title XIX eligible recipients up to 30 days following the effective date the center's provider agreement is canceled.

a. The payment limitation also applies to Title XIX participants admitted prior to the cancellation of the agreement.

b. Payment is permitted only if the center totally cooperates in the orderly transfer of participants to other Title XIX centers or other placement arrangement of their choice.

Note: The center shall not admit new Title XIX recipients after receiving the notice that its agreement has been canceled. There shall be no payment approved for such an admittance.

6. Coordination of Mass Transfer Activities

a. This process requires concentrated and prompt coordination among the following groups:

i. the Bureau of Health Services Financing, HSS regional office,

ii. the parish office of the Bureau of Health Services Financing;

iii. the center; and

iv. other offices as designated by DHH.

b. This coordinated effort shall have the following objectives:

i. protection of participants;

ii. assistance to participants in finding the most appropriate placements when requested by them and/or their responsible parties; and

iii. timely termination of vendor payment upon the participant's discharge from the center.

Note: The center still retains its usual responsibility during the transfer/discharge process to notify the parish Bureau of Health Services Financing promptly of all changes in the recipient's status.

7. Transfer Team

a. DHH shall designate certain staff members as a transfer team when a mass transfer of participants is necessary.

b. Their responsibilities shall include supervising transfer activities in the event cancellation of a provider agreement is proposed or in the event the center voluntarily terminates Title XIX participation.

c. The following steps and procedures shall be taken by or under the supervision of this team:

i. Step 1: Identification and Coordination. When a provider agreement is extended for up to 30 days beyond its original expiration date, the transfer team shall immediately perform the following tasks:

(a) identify appropriate receiving centers or facilities for the affected participants; and

(b) coordinate efforts with the BHSF, HSS regional office. The regional office has the responsibility to evaluate each participant's condition to make a determination about his/her appropriate level of care.

ii. Step 2: Supervision and Assistance. The transfer team shall take the following actions:

(a) supervise the center after cancellation of the agreement and during the transfer of its Title XIX participants;

(b) determine the last date for which vendor payment for a participant's care can be made;

(c) assist in making the most appropriate arrangements for the participants, providing the team member's names as contact persons if such help is needed.

iii. Step 3: Effecting the Transfer. In order to insure an orderly transfer/discharge, the transfer team shall also be responsible for performing the following tasks:

(a) they shall meet with appropriate center administrative staff and other personnel as soon as possible after termination of a provider agreement to discuss the transfer planning process;

(b) they shall continue to meet periodically with the center personnel throughout the transfer planning process;

(c) they shall identify any potential problems;

(d) they shall monitor the center's compliance with transfer procedures;

(e) they shall resolve disputes in the participant's best interest;

(f) they shall encourage the center to take an active role in the transfer planning.

(g) they shall notify their superiors immediately of any lack of cooperation on the part of the center since this affects whether or not vendor payment will continue.

8. Provisions for Participant Services during Transfer/Discharge

a. DHH Responsibilities. DHH has the following responsibilities:

i. to provide social services necessary in the transfer/discharge plan or otherwise necessary to insure an orderly transfer/discharge in accordance with the Title XX State Plan; and

ii. to obtain other services available under Title XIX.

b. Participant Status Listing

i. At the conclusion of the 30-day period referred to in §10933.F.7, the transfer team shall submit a report to the BHSF state and parish offices, identifying the placement of each Title XIX participant who has been transferred to another Title XIX provider.

ii. If any participant has elected to end ADHC participation, this shall also be reported.

G. Emergency Situations

1. The center is responsible for immediately notifying BHSF, state and regional offices when a bona fide emergency exists, such as fire, contagious disease, or a severe threat to the participant's safety and well-being.

2. Each participant shall be immediately transferred or discharged from a center when a bona fide emergency exists, such as fire, contagious disease, or a severe threat to participant's safety and well-being.

3. Emergency transfers shall be closely reviewed and monitored by BHSF.

Note: Appropriate sanctions shall be imposed on centers which use emergency transfer provisions when no bona fide emergency exists.

4. Participant Rights. Nothing in the transfer/discharge plan shall interfere with existing participant rights.

5. Intelligent Waiver of Participant Rights

a. A participant may knowingly and intelligently waive any of the provisions of these regulations, provided the waiver is in writing.

b. The BHSF, State Office, shall review all such waivers. The review shall insure that participants freely and intelligently waived their rights only after they and their responsible parties were fully informed of their rights under these transfer/discharge procedures.

Note: Appropriate sanctions shall be imposed on centers which obtain waivers by coercion or without providing full information about participant rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:630 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1160 (September 1997).

§10935. Incident Reports

A. Incident reports shall be completed for each participant who is:

1. involved in an accident or is injured at the center. This shall include a participant's involvement in any occurrence which has the potential for affecting the welfare of any participant;

2. on elopement status or whose whereabouts is unknown for any length of time.

B. Incident reports shall be compiled into a central record. The fact that the participant was involved in an accident or incident and that an incident report was completed shall be entered into the progress notes of the participant's record by the individual completing the incident report.

C. Incident reports shall include, as a minimum, the following information:

1. the name of the participant;
2. the date and time of the incident;
3. the names of witnesses to the incident;
4. a detailed description of the incident;
5. a description of the action taken by the center with regard to the incident.

D. The LPN, with RN or MD consultation, and the center director shall document review of each incident report within 24 hours.

E. At the end of each quarter, the center's interdisciplinary team shall review and analyze the incident reports to:

1. insure that they contain the information specified §10935.C;
2. identify staff training needs;

3. identify patterns which may indicate a need for changes in the center's policies or procedures;

4. assist in the identification of those participants who may require changes in their plans of care or who may not be appropriately placed in the ADHC center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:632 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1163 (September 1997).

§10937. Complaint Procedure

A. The DHH complaint procedure shall be posted conspicuously in public areas of the center.

B. Participants shall be encouraged by the center staff to make recommendations and to register complaints with the officials of the center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:633 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1163 (September 1997).

§10939. Reserved. (formerly Vendor Payment--now found in §10927)

§10943. Appeals Procedure

A. Scope. DHH reserves the right to:

1. impose sanctions against any center;
 2. reject any center's request for Title XIX participation;
- or
3. terminate any center's participation status under the conditions specified in §10947.B.

B. Informal Reconsideration

1. When a center receives a written adverse action, along with a copy of the findings upon which the decision was based, the center may notify the assistant secretary, BHSF, within 15 days of receiving the notification and request an informal reconsideration. The center may:

- a. provide the assistant secretary with a letter and supporting documents, if applicable, to refute DHH's findings which result in the adverse action; or
- b. present such findings which result in the adverse action; or
- c. present such documentation at a meeting with the assistant secretary or his/her designee.

2. DHH shall review all documents submitted by the center and advise the center, in writing, prior to the effective date of the following actions:

- a. that the original decision has been upheld; or
- b. that the original decision has been reversed.

Note: The informal reconsideration decision is binding and the adverse action is not delayed by the center's request for an evidentiary hearing.

3. If the center receives written notification that the adverse action is being upheld, then the center may request an evidentiary hearing.

C. Evidentiary Hearing

1. General Requirements

a. Any center which receives an adverse action from DHH may request an evidentiary hearing. Such a request shall be made to the secretary, DHH, within 30 days of receiving notification from DHH affirming the original adverse action based on the informal reconsideration.

b. The evidentiary hearing shall be conducted by DHH's Appeals Section which shall notify all interested parties of the time and place of the hearing.

c. Any party may appear and be heard at the proceeding through representation by an attorney-at-law or through a designated representative under the following conditions:

i. all persons appearing in proceedings before the Appeals Section shall conform to the standards of conduct practiced by attorneys before the courts of the state;

ii. if a person does not conform to those standards, the hearing officer may decline to permit the person to appear in the proceedings.

d. Persons appearing in a representative capacity on behalf of the center shall file a written notice of appearance giving the following information:

i. their names;

ii. their addresses;

iii. their telephone numbers;

iv. the party they represent; and

v. a written authorization to appear on behalf of the center.

e. The Appeals Bureau shall notify the center, in writing, of the names and telephone numbers of DHH's representatives.

f. All papers filed in any proceeding shall meet the following criteria:

i. they shall be typewritten;

ii. they shall be signed by the party, authorized representative, or attorney;

iii. they shall contain the address and telephone number of the party, authorized representative, or attorney; and

iv. at least an original and two copies of all papers shall be submitted to the Appeals Bureau.

2. Preliminary Conference. Upon receiving a request for an evidentiary hearing, the Appeals Bureau must schedule a preliminary conference within 30 calendar days of receiving such a request or prior to the proposed termination date.

a. Purposes of Preliminary Conferences. The purposes of the preliminary conferences shall include, but are not limited to, the following:

i. clarification, formulation, and simplification of issues;

ii. resolution of matters in controversy;

iii. exchange of documents and information;

iv. review of audit findings;

v. reconsideration of any suspension or withholding of payments;

vi. stipulations of fact so as to avoid unnecessary introduction of evidence at the formal hearing;

vii. the identification of witnesses; and

viii. such other matters as may aid disposition of the issues.

b. Preliminary Conference Notification. When the Appeals Bureau schedules a preliminary conference, it shall notify the center in writing. The notice shall direct any parties and their attorneys to appear at a specific date, time, and place.

c. Conference Results

i. When the preliminary conference resolves all or some matters in controversy, the Appeals Bureau shall submit a written summary of the following:

(a). the findings agreed to at the conference;

(b). the results of the conference; and

(c). a statement of further action required by the center or DHH.

ii. When the preliminary conference does not resolve all matters in controversy, an evidentiary hearing shall be scheduled on those matters still in controversy. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference.

3. Evidentiary Hearing

a. When an evidentiary hearing is scheduled, the Appeals Bureau shall notify the center and/or attorney, in writing, of the date, time, and place of the hearing.

b. The notice shall be mailed not less than 10 calendar days before the scheduled hearing date.

c. The Appeals Bureau shall also include a summary of the results of the preliminary conference.

d. The Appeals Bureau shall adhere to the following in regard to the evidentiary hearing:

i. The hearing shall be conducted by a hearing officer authorized to conduct such hearings.

ii. Testimony shall be taken only on oath, affirmation, or penalty of perjury.

iii. Each party shall have the right to do the following:

(a). call and examine parties and witnesses;

(b). introduce exhibits;

(c). question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination;

(d). impeach any witnesses regardless of which party first called them to testify; and

(e). rebut the evidence against witnesses.

iv. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely on in the conduct of serious affairs. This evidence shall be admitted regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal action.

v. The hearing officer may question any party or witness and may admit any relevant and material evidence.

vi. The hearing officer shall control the admission of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the hearing officer shall explain the issues and the order in which evidence shall be received.

vii. The burden of producing documentary evidence is on the party against whom the adverse action is being taken.

viii. Parties shall arrange for the presence of their witnesses at the hearing:

(a). a subpoena may be issued by the hearing officer upon written request by a party showing the need for the witness' presence;

(b). a subpoena to compel the attendance of a witness may be issued by the hearing officer on his/her own motion;

(c). an application for subpoena duces tecum for a witness to produce documents, papers, books, accounts, letters, photographs, objects, memoranda, other correspondence, records, or tangible items not privileged shall be made by affidavit to the hearing officer, giving the name and address of the person or entity upon whom the subpoena is to be served:

(i). it shall describe the items which are desired to be produced and show the materiality of the evidence to the issue involved in the proceeding;

(ii). it shall also include a statement that, to the best of a person's knowledge, the witness has such items in his/her possession or under his/her control.

4. Amendments to Evidence

a. At any time prior to the completion of the hearing, amendments may be allowed on just and reasonable terms for the following reasons:

i. to add any party who should have been a part of the hearing process;

ii. to dismiss any party's evidence from the proceedings;

iii. to change the allegations or defenses; or

iv. to add new causes of action or defenses.

b. Where the agency seeks to add a party or give a cause of action or change in allegation, notice shall be given to the appropriate parties. Where a party other than DHH seeks to add a party or change defenses, notice shall be given in accordance with §10943.C.3.c.vii. The hearing officer shall continue the hearing for such time as deemed appropriate, and notice of the new date shall be given in accordance with §10943.C.3.

c. Continuance or Further Hearing

i. The hearing officer may continue a hearing to another time or place or order a further hearing under the following conditions:

(a). on his/her own motion; or

(b). at the request of any party upon showing good cause.

ii. When the hearing officer determines that additional evidence is necessary for the proper determination of the case, he/she may, at his/her discretion, do the following:

(a). continue the hearing to a later date and order the party to produce additional evidence; or

(b). close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any evidence so submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

iii. Written notice of the time and place of a continued or further hearing shall be given.

Exception: When a continuance or further hearing is ordered during a hearing, oral notice of time and place of the hearing may be given to each party present.

5. Record of Proceedings. A complete record of the proceedings shall be made.

a. The testimony shall be transcribed and copies of other documentary evidence shall be reproduced when directed by the hearing officer.

b. The record shall also be transcribed and reproduced at the request of a party, provided the party pays for the cost of reproducing the transcript.

6. Failure to Appear

a. If a center representative fails to appear at a hearing, a decision may be issued by the Appeals Section dismissing the hearing.

b. A copy of the decision shall be mailed to each party together with a statement of the center's right to reopen the hearing.

c. Any dismissal may be rescinded if the center makes a written application to the hearing officer within 10 calendar days after the mailing of the decision, showing good cause for failure to appear at the hearing.

7. Timely Processing

a. The hearing shall be completed and a written decision rendered by the secretary, DHH, setting forth the reasons for the decision and the evidence upon which the decision is based within 30 calendar days of the conclusion of the hearing.

b. The decision of the secretary shall be final subject only to judicial review by the courts. Copies of the decision shall be mailed to the center at its last known address and to any representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:634 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1163 (September 1997).

§10945. Audits

A. All providers who elect to participate in the Title XIX Program shall be subject to audit.

1. A sufficient representative sample of providers will be fully audited to insure the fiscal integrity of the program and compliance of providers with program regulations governing reimbursement.

2. Limited scope and exception audits shall be conducted as required.

B. In addition to routine audits related to fiscal accountability, audits may also be conducted at the time of change of ownership, voluntary or involuntary closure of a center, or investigation of complaints against a center.

C. Each center shall submit a cost report to Bureau of Health Services Financing within 90 days of the end of its accounting period or fiscal year end.

D. Instructions for cost reporting and the form to be used are provided in the Provider Enrollment packet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:636 (June

1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1165 (September 1997).

§10947. Compliance with Standards for Payment

A. A center may be found to be out of compliance with Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109, as a result of the following activities:

1. field or desk audits;
2. utilization reviews;
3. inspection of care;
4. complaint investigations;
5. licensing surveys;
6. federal reviews or assessments;
7. Attorney General's Medicaid Fraud Control Unit investigations;
8. Surveillance and Utilization Reviews (SURs).

B. DHH reserves the right to impose interim sanctions, to reject any center's request for Title XIX participation, or to terminate any center's participation when there is documentation that the center:

1. fails to abide by the rules and regulations promulgated for the ADHC Program by the BHSF or any other state or federal agency;
2. is not in compliance with Title VI of the Civil Rights Act;
3. engages in practices not in the best interests of any medical assistance recipient;
4. fails to achieve and maintain substantial compliance with Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109. It shall be the decision of the secretary of DHH to refuse or terminate enrollment for this reason;
5. has previously been sanctioned.

C. Interim Sanctions

1. DHH may impose sanctions if a center is found to be not in compliance with Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109, or licensing regulations for adult day health care centers.

2. These sanctions are directly related to:

- a. the severity of the conditions found in the center which adversely affect or potentially affect the safety, rights, health and well-being of the participants;
- b. the degree of fiscal integrity with which the center is administered;
- c. compliance with Standards for Payment—Adult Day Health Care Centers, LAC 50:II.Chapter 109.

3. Health, Safety and Personal Rights Violations Sanctions

- a. Sanctions for health, safety and personal rights violations include:
 - i. restricted Title XIX certification for new admissions;
 - ii. fiscal sanctions;
 - iii. withholding of vendor payment;
 - iv. provisional licensure.

b. Provisional Licensure Status

- i. The center's license may be placed in provisional status for a period not to exceed 90 days.
- ii. If there is no documentation of immediate improvement in the conditions which affect the life, safety or welfare of the participants, the license shall be revoked.

4. Sanctions for Administrative Violations

a. Sanctions for administrative violations include:

- i. fiscal sanctions;
- ii. withholding of vendor payment;
- iii. provisional licensure.

b. Provisional Licensure Status

- i. The center's license may be placed in provisional status for a period not to exceed 90 days.
- ii. If there is no documentation of immediate improvement in the conditions which affect the life, safety or welfare of the participants, the license shall be revoked.

D. Appeals Procedure. See §10943 which describes the appeal's procedure a center may use when adverse action has been taken against it by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:636 (June 1985), repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1166 (September 1997).

Bobby P. Jindal
Secretary

9709#080

RULE

**Department of Revenue
Office of the Secretary**

Electronic Filing Signature
Alternatives (LAC 61:I.4905)

Under the authority of R.S. 47:1520 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of the Secretary has amended LAC 61:I.4905 to provide for additional tax return signature alternatives.

The department is in the process of implementing several new alternative filing programs which will reduce the number of paper tax returns to be manually processed. Because many of the department's tax statutes require that tax returns have a written signature or declaration, an alternative to the signature/written declaration is required for tax returns filed electronically or through other alternative nonpaper means. This amendment provides for signature alternative for sales tax returns filed via a touch-tone telephone and individual income tax returns filed by taxpayers using personal computers and software providers/transmitters.

**Title 61
REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 49. Tax Collection

§4905. Signature Alternatives; Electronic Filings

A. As authorized by R.S. 47:1520, the following alternate methods for signing, subscribing, or verifying tax returns, statements, or other documents filed by electronic means are allowed and shall have the same validity and consequence as the actual signature and/or written declaration.

B. Electronic Filing. The following alternatives, as determined by the secretary, are allowed for submitting a written signature/declaration for tax returns transmitted electronically by the taxpayer's agent:

1. the taxpayer's signature document maintained by the electronic filer on file and secured for a period of three years from December 31 of the year in which the taxes were due;
2. the taxpayer's signature on a trading partner agreement with the department; or
3. an electronic signature as determined by the secretary.

C. Telefiling

1. Individual Income Tax Returns. For tax returns filed by the taxpayer using a touch-tone telephone to transmit return information, a voice recording of the taxpayer, and spouse for married taxpayers filing joint returns, will serve as a signature alternative. The voice recording will be maintained by the department for a period of three years from December 31 of the year in which the taxes were due.

2. Sales Tax Returns. For tax returns filed by the taxpayer using a touch-tone telephone to transmit return information, a Personal Identification Number (PIN) will serve as the signature alternative.

D. On-Line Filing. For individual income tax returns filed by the taxpayer using a personal computer and software provider/transmitter, the signature document provided by the department must be completed and filed with the department as an alternative to the signed tax return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Office of the Secretary, LR 22:35 (January 1996), amended by the Department of Revenue, Office of the Secretary, LR 23:1167 (September 1997).

John Neely Kennedy
Secretary

9709#005

RULE

**Department of Revenue
Severance Tax Division**

**Natural Resources Severance
Tax Payout (LAC 61:I.2903)**

Under the authority of R.S. 47:633 and R.S. 47:648.3, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of

Revenue, Severance Tax Division has amended LAC 61:I.2903.A to define *payout of the well cost*.

R.S. 47:633(7)(c)(iii), R.S. 47:633(9)(d)(v), and R.S. 47:648.3 allow severance tax suspensions for horizontal, deep, and new discovery wells. The suspensions are limited to 24 months or until payout of the well cost, whichever comes first. Because payout of the well cost triggers the end of the severance tax suspension, the computation should be uniform for all taxpayers. This amendment defines the term *Payout* and specifies those well costs that are considered direct operating well costs.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 29. Natural Resources: Severance Tax

**§2903. Severance Taxes on Oil; Distillate, Condensate
or Similar Natural Resources; Natural Gasoline
or Casinghead Gasoline; Liquefied Petroleum
Gases and Other Natural Gas Liquids; and Gas**

A. Definitions

* * *

Payout—the payout of the well cost for a horizontal well as referred to in R.S. 47:633(7)(c)(iii), a deep well as referred to in R.S. 47:633(9)(d)(v), and a new discovery well as referred to in R.S. 47:648.3 occurs when gross revenue from the well, less royalties and operating costs directly attributable to the well, equals the well cost as approved by the Office of Conservation. Operating costs are limited to those costs directly attributable to the operation of the exempt well, such as direct materials, supplies, fuel, direct labor, contract labor or services, repairs, maintenance, property taxes, insurance, depreciation, and any other costs that can be directly attributed to the operation of the well.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:633 and R.S. 47:648.

HISTORICAL NOTE: Adopted by the Department of Revenue and Taxation, Severance Tax Division, August 1974, amended and promulgated LR 3:499 (December 1977), amended LR 20:1129 (October 1994), repromulgated LR 20:1299 (November 1994), amended by the Department of Revenue, Severance Tax Division, LR 23:1167 (September 1997).

Carl Reilly
Assistant Director

9709#014

RULE

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

**Black Bass—Daily Take and
Size Limits (LAC 76:VII.149)**

The Wildlife and Fisheries Commission hereby amends a rule for black bass in the John K. Kelly-Grand Bayou Reservoir.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 1. Freshwater Sport and Commercial Fishing
§149. Black Bass—Daily Take and Size Limits

* * *

B. In addition, the commission establishes special size and daily take regulations for black bass on the following water bodies:

* * *

2. Lake Bartholomew (Morehouse and Ouachita Parishes), Black Bayou Lake (Bossier Parish), Chicot Lake (Evangeline Parish), Cross Lake (Caddo Parish), John K. Kelly-Grand Bayou Reservoir (Red River Parish), Lake Rodemacher (Rapides Parish) and Vernon Lake (Vernon Parish):

a. Size Limit: 14 inch - 17 inch slot. A 14 - 17 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 14 inches and 17 inches, both measurements inclusive.

b. Daily Take: eight fish of which no more than four fish may exceed 17 inches maximum total length.*

c. Possession limit:

i. On water - Same as daily take.

ii. Off water - Twice the daily take.

*Maximum total length—the distance in a straight line from the tip of the snout to the most posterior point of the depressed caudal fin as measured with mouth closed on a flat surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 (25)(a), 325(C), 326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:364 (June 1988), amended LR 17:278 (March 1991), repromulgated LR 17:488 (May 1991), amended LR 17:1122

(November 1991), LR 20:796 (July 1994), LR 23:1168 (September 1997).

Daniel J. Babin
Chairman

9709#033

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Nonresident Duck Stamp
Fee Increase (LAC 76:V.317)

The Wildlife and Fisheries Commission hereby promulgates a rule increasing the fee for nonresident waterfowl stamps.

Title 76
WILDLIFE AND FISHERIES
Part V. Wild Quadrupeds and Wild Birds
Chapter 3. Wild Birds
§317. Nonresident Duck Stamp Fee Increase

Beginning in the 1997-98 license year, the fee for purchasing a nonresident duck stamp will be increased from \$7.50 to \$13.50. This change will remain in effect until additional changes are warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(28).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 23:1168 (September 1997).

Daniel J. Babin
Chairman

9709#034

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Office of Financial Institutions

Licensee's Informal Opportunity to
Show Compliance (LAC 10:XXI.101)

In accordance with the authority granted by the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:952(2), the Department of Economic Development, Office of Financial Institutions hereby gives notice of intent to adopt the following rule to provide for an informal procedure for a licensee to show compliance with all lawful requirements for retention of his license, in conformity with R.S. 49:961(C).

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XXI. Miscellaneous Provisions

Chapter 2. Procedures

§201. Informal Opportunity to Show Compliance

A. Definitions

Commissioner—the commissioner of the Louisiana Office of Financial Institutions.

Licensee—any person or entity chartered or licensed by the Louisiana Office of Financial Institutions.

Office—the Louisiana Office of Financial Institutions.

B. Prior to the institution of agency proceedings regarding the revocation, suspension, annulment, or withdrawal of a license, when such action must be accomplished pursuant to the Administrative Procedure Act, R.S. 49:950 et seq., the office shall give notice by mail to the licensee, setting forth the facts or conduct which serve(s) as the office's basis for such action. The notice shall advise the licensee that he is being offered an opportunity to participate in an informal meeting with a representative of the office to show compliance with all lawful requirements for retention of the license, in conformity with R.S. 49:961(C).

C. The licensee shall have 15 calendar days from receipt of such notice to request, in writing, an informal meeting. Such informal meeting shall be held not less than 10 days nor more than 30 days following receipt of the licensee's request for the meeting, unless the commissioner determines that an extension is warranted.

D. Notwithstanding any other provision of this rule, if the office finds that the public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in an order to the licensee, summary suspension may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:952(2).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 23:

Any interested person may submit written comments regarding the contents of this proposed rule to Larry L. Murray, Commissioner of the Office of Financial Institutions, by mail to the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095. All comments must be received no later than 5 p.m. on October 20, 1997.

Larry L. Murray
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensee's Informal Opportunity to Show Compliance

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This office anticipates no such estimated implementation costs (savings). This proposed rule memorializes a current practice of the Office of Financial Institutions.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This office anticipates no such estimated effect.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This office anticipates no such estimated costs and/or economic benefits. This proposed rule is being promulgated to assure compliance with the Administrative Procedure Act requirement that all state agencies must provide a licensed entity the opportunity to have an informal hearing regarding noncompliance enforcement actions.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This office anticipates no such estimated effect.

Gary L. Newport
Chief Attorney
9709#047

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Jobs for Louisiana Graduates Specialist Certification

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 proposed requirements for Certification for the Jobs for Louisiana's Graduates Job Specialist. The requirements, which are an addition to Bulletin 746, Part B, Louisiana Standards for State Certification of School Personnel, Vocational-Technical Personnel, Postsecondary, are printed below.

IV. Jobs for Louisiana's Graduates Job Specialist

A. Education/Experience:

1. a bachelor's degree from a state-approved and regionally accredited college or university, preferably in education, business administration, marketing, or related field and two years of full-time work experience, preferably in business, marketing, or related field; or

2. a high school diploma or General Equivalency Diploma (GED) and five years of full-time work experience, preferably in business, marketing, or related field. Exceptions to the number of required years of experience may be approved by the Board of Elementary and Secondary Education.

B. When the applicant has met the requirements listed under Items A.1 or 2, a one-year vocational-technical certificate will be issued. For renewal of this certificate, applicants with a high school diploma must earn at least three semester hours in professional vocational education each year until a minimum of 15 semester hours has been completed, at which time the vocational-technical certificate shall become permanent. Applicants with a bachelor's degree shall earn nine semester hours on the same basis.

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

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 23:

Interested persons may submit written comments until 4:30 p.m., November 10, 1997 to Jeannie Stokes, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Vocational-Technical Personnel Job Certification for Specialists

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The adoption of this proposed policy will cost the Department of Education approximately \$600 (printing and postage) to disseminate the policy.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$80. Funds are available.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The extension of this proposed policy will allow certified teachers, as well as VTIE certified teachers, to be employed by local school systems to teach the *Jobs for Louisiana's Graduates* course.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The extension of this proposed policy allows school systems to hire job specialists with VTIE certification to teach the *Jobs for Louisiana's Graduates* course.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9709#084

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

State Content Standards (LAC 28:I.930)

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 State Content Standards: Bulletin 1955, Mathematics Framework; Bulletin 1962, Science Framework; Bulletin 1963, The Arts Contents Standards; Bulletin 1964, Social Studies Content Standards; Bulletin 1965, English Language Arts Content Standards; and Bulletin 1966, Foreign Language Content Standards.

The content standards will be referenced in the *Louisiana Administrative Code* as follows:

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations §930. State Content Standards

A. Bulletin 1955—Mathematics Framework

1. Bulletin 1955, Standards for Mathematics Framework in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks to be used by Local Agencies (LEAs) as a basis for curriculum design. These standards and benchmarks define what Louisiana students should know and be able to do.

B. Bulletin 1962—Science Framework

1. Bulletin 1962, Standards for Science Framework in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks to be used by Local Agencies (LEAs) as a basis for curriculum

design. These standards and benchmarks define what Louisiana students should know and be able to do.

C. Bulletin 1963—Arts Content Standards

1. Bulletin 1963, Standards for Arts Content in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks to be used by Local Agencies (LEAs) as a basis for curriculum design. These standards and benchmarks define what Louisiana students should know and be able to do.

D. Bulletin 1964—Social Studies Content Standards

1. Bulletin 1964, Standards for Social Studies in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks to be used by Local Agencies (LEAs) as a basis for curriculum design. These standards and benchmarks define what Louisiana students should know and be able to do.

E. Bulletin 1965—English Language Arts Content Standards

1. Bulletin 1965, Standards for English Language Arts in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks to be used by Local Agencies (LEAs) as a basis for curriculum design. These standards and benchmarks define what Louisiana students should know and be able to do.

F. Bulletin 1966—Foreign Language Content Standards

1. Bulletin 1966, Standards for Foreign Language in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks to be used by Local Agencies (LEAs) as a basis for curriculum design. These standards and benchmarks define what Louisiana students should know and be able to do.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 23:

The content standards, in the areas of mathematics, science, arts, social studies, English language arts, and foreign language, were published and disseminated to all Louisiana public schools, regional service centers, and area school superintendents. A complete set of the content standards may be viewed in the Office of the State Register, 1051 North Third Street, Baton Rouge; the Office of the State Board of Elementary and Secondary Education; or the Bureau of Pupil Accountability, State Department of Education.

Interested persons may submit comments until 4:30 p.m., November 10, 1997 to Jeannie Stokes, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: State Content Standards**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

For the 1997-98 fiscal period, the estimated publication and distribution cost of this proposed rule is \$21,380.

BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$160. Funds are available.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Content standards represent what students should know and be able to do. Demonstrating a proficiency of these standards may increase economic benefits over their lifetime.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Students completing the K-12 grades in schools that base instruction on these rigorous and challenging standards may receive additional employment opportunities.

Marlyn Langley
Deputy Superintendent
Management and Finance
9709#075

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

**Scholarship and Grant Policy Manual—Tuition
Assistance Plan (TAP) and Honors Scholarship**

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the Tuition Assistance Plan and Honors Scholarship materials in the Scholarship and Grant Policy and Procedure Manual.

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed amendment until 4:30 p.m., October 20, 1997, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Scholarship and Grant Policy
Manual—Tuition Assistance Plan (TAP) and Honors
Scholarship**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The cost for publication of the notice of intent and rule is approximately \$960, which is within the current administrative budget. Implementation of the proposed revisions are not projected to affect the current year's budget. The agency has flexibility to move any surplus funds from one scholarship program to another as necessary to cover expenditure needs associated with the changes in the program rules.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from this action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Continuing and new recipients of the Tuition Assistance Plan (TAP) and Honors Scholarship are affected by the requirements of implementing a new program (the Tuition Opportunity Program for Students or TOPS) and phasing out the TAP and Honors Scholarship. They must be advised of how these changes affect them and inform themselves about their responsibilities so they may apply and provide necessary information to be considered and establish their eligibility for the new program. Each student recipient of the program may gain a tuition award and, in some program components, additional funding if he/she complies with requirements and is determined to be eligible for the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this change.

Jack L. Guinn
Executive Director
9709#048

H. Gordon Monk
Staff Director
Legislative Fiscal Office

99-2000, \$3,879,511; for FY 2000-2001, \$4,217,141; and for FY 2001-2002, \$5,137,661.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from this action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

High school graduates of 1997 who may be eligible for the Tuition Opportunity Program for Students (TOPS) and their families are impacted by this proposed rule. They will be required to apply for the program by the deadline and be determined eligible in order to procure the benefits of the program. Potential student recipients who are determined to be eligible for the program may gain their tuition award and any additional cash benefit to which they are entitled.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this change.

Jack L. Guinn
Executive Director
9709#049

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

**Tuition Opportunity Program for
Students (TOPS)—1997 Eligibility**

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to provide eligibility information for 1997 High School Graduates under the Tuition Opportunity Program for Students (TOPS).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the statement until 4:30 p.m., October 20, 1997, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

**Tuition Opportunity Program for
Students (TOPS)—Teachers Award**

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to adopt rules for the Tuition Opportunity Program for Students (TOPS)—Teachers Award program.

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed rule until 4:30 p.m., October 20, 1997, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Tuition Opportunity Program for Students
(TOPS)—1997 Eligibility**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The cost to publish rule changes during the current year are estimated at \$480. Additional costs to include 1997 high school graduates in the Tuition Opportunity Program for Students (TOPS) program are: for FY 98-99, \$4,100,872; for FY

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Tuition Opportunity Program for Students
(TOPS)—Teachers Award**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Costs to implement the program for FY 97-98, \$441,120; for FY 98-99, \$437,059; and for FY 1999-2000, \$438,478; include salary for one position, printing, postage, telephone charges, office supplies, and minimal office equipment, as well as \$400,000 for the awards.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No impact on revenue collections is anticipated to result from this action.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

New recipients of the Tuition Opportunity Program for Students (TOPS)—Teachers Award are affected by the requirements of implementing this new program, and must be advised of the provisions so they may apply and provide the necessary information to be considered and establish their eligibility for the program. Each potential student recipient of the program may gain a tuition award and a cash benefit if he/she complies with the requirements, is determined eligible for the program, and is competitively selected for the award.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated to result from this change.

Jack L. Guinn
Executive Director
9709#050

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Lead-Based Paint Activities
(LAC 33:III.Chapters 2 and 28)(AQ114)**

(Editor's Note: The following fiscal and economic impact statement, which accompanied the above referenced notice of intent, is being republished to correct a typographical error in question IV. The notice of intent was originally published on pages 1020 - 1035 of the August 20, 1997 Louisiana Register.)

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Lead-Based Paint Activities**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation costs to state government for the Lead Program are estimated at \$270,872 in FY 97-98, \$233,600 in FY 98-99, and \$261,324 in FY 99-00.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Annual revenue estimates for funds collected by the state: \$388,196 in FY 97-98; \$268,585 in FY 98-99; and \$261,324 in FY 99-00; these totals include federal grant funds.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Estimated costs for training, training provider accreditation, certification, license approval, and project notification are: \$184,500 in FY 97-98; \$231,000 in FY 98-99; and \$236,400 in FY 99-00.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The estimated effect on competition is expected to be positive, due to an increasing pool of trained and certified lead-based paint activities professionals, and overall employment is expected to benefit from the proposed rule.

L. Hall Bohlinger
Deputy Secretary
9709#023

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Office of Veterans Affairs**

State Aid Eligibility (LAC 4:VII.917)

In accordance with Act 1195 of the 1997 Regular Legislative Session, the Office of Veterans Affairs intends to amend LAC 4.VII.917.C and E pertaining to eligibility requirements for the State Aid Program.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 9. Veterans Affairs

Subchapter B. State Aid Program

§917. Eligibility

C. The veteran must be rated 90 percent or above service-connected by evaluation of the rating schedule. (Total rating on basis of individual unemployment or temporary ratings does not meet requirements.)

E. The qualified veteran must have been a resident of Louisiana for at least two years immediately preceding admission of the child into a training institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:288, as amended Act 1195, 1997.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 7:485 (October 1981), amended LR 13:743 (December 1987), amended LR 19:1565 (December 1993), LR 23:

Interested persons may submit inquiries or written comments on the proposed amendments by 4:30 p.m., October 20, 1997, to John E. Caulking, Executive Director, Box 94095, Capitol Station, Baton Rouge, LA 70804-9095, or to 1885 Wooddale Boulevard, Tenth Floor, Baton Rouge, LA 70806.

John E. Caulking
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: State Aid Eligibility**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no significant anticipated implementation costs to state or local governmental units from the adoption of the

proposed amendments. Prior to this amendment, dependents of veterans with a 100 percent disability rating were not required to pay tuition to a state college, university or vocational-technical school. This amendment reduces the disability rating for qualified veterans to 90 percent, which will provide free tuition to the dependents of approximately 226 additional veterans. The Legislature does not appropriate any funds to state schools to cover the costs of qualified dependents. State schools have been able to absorb these costs, and it is anticipated that state schools will continue to absorb any costs associated with additional qualified dependents.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments are not estimated to have a significant effect, if any, on revenue collections of state or local governmental units. The proposed amendments will allow the dependents of approximately 226 veterans with at least a 90 percent disability rating to attend any state college, university, or vocational-technical school without having to pay tuition. There is the potential for a loss in revenue collections from school-imposed fees which would have otherwise been collected from a dependent which will now qualify for free tuition; however, any loss in revenue collections should be minimal.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs to directly affected persons or nongovernmental groups. The economic benefits to directly affected persons will be free tuition to a state college, university, or vocational-technical school for dependents of veterans which now will qualify from the proposed amendments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is the potential for better employment opportunities for qualified veterans' dependents who attend a state college, university, or vocational-technical school because of the tuition exemption. There is no estimated effect on competition from the proposed amendments.

John E. Caulking
Executive Director
9709#045

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Board of Physical Therapy Examiners

Licensure; Unauthorized Practice; and
Supervision (LAC 46:LIV.Chapters 1 and 3)

Notice is hereby given, in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, that the Board of Physical Therapy Examiners (Board), pursuant to the authority vested in the board by R.S. 2401.2A(3), intends to amend its existing rules as set forth below.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIV. Physical Therapy Examiners

Subpart 1. Licensing and Certification

Chapter 1. Physical Therapists and Physical Therapist Assistants

Subchapter A. General Provisions

§107. Qualifications for License

A. - B.5. . . .

C. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualifications in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:662 (July 1991), 19:208 (February 1993), LR 22:284 (April 1996), LR 23:

Subchapter C. Graduates of Foreign Physical Therapy Schools

§115. Qualification for License

A. - A.1. . . .

2. have successfully completed his education in physical therapy that is substantially equivalent to the requirements of physical therapists educated in accredited physical therapy programs in the United States as the board, upon evaluation of the applicants educational program by an approved credentials evaluation service, deems sufficient, however, such substantially equivalent education shall be no less than a total of 120 semester hour credits which includes a minimum of 60 semester hour credits for professional education and a minimum of 50 semester hours of general education;

3. - 4. . . .

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 23:

Subpart 3. Practice

Chapter 3. Practice

Subchapter A. General Provisions

§303. Definitions

As used in this Chapter, the following terms and phrases shall have the meanings specified:

* * *

Student—means a person who is pursuing a course of study leading to a degree as a physical therapist (SPT) or a physical therapist assistant (SPTA) in a professional education

program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 21:394 (April 1995), LR 23:

§305. Special Definition: Practice of Physical Therapy

A. As used in the definition of *practice of physical therapy* set forth in the Physical Therapy Practice Act, and as used in this Chapter, the following terms shall have their meanings specified:

* * *

Continuous Supervision—means responsible, continuous, on-the-premises observation and supervision by a licensed physical therapist of the procedures, functions and practice rendered by a physical therapy aide/technician, student, physical therapist assistant permittee pending licensure by examination or re-examination, and physical therapist temporary permittee who has once failed the licensing examination.

* * *

Physical Therapy Supportive Personnel

a. ...

b. *Physical Therapist Assistant*—a graduate of an associate degree program in physical therapist assisting accredited by American Physical Therapy Association and who is licensed by this board. The physical therapist assistant may not supervise physical therapy aides/technicians without a physical therapist continuously on the premises.

c. The level of responsibility assigned to *physical therapy supportive personnel* is at the discretion of the physical therapist, who is ultimately responsible for the acts or omissions of these individuals. Supportive personnel may perform only those functions for which they have documented training and skills. The prohibitions for physical therapy supportive personnel shall include, but not be limited to, interpretation of referrals; performance of evaluation procedures; initiation or adjustment of treatment programs, assumption of the responsibility for planning patient care, or any other matters as determined by the board. The physical therapist shall only delegate portions of the treatment session to an aide/technician only after the therapist has assessed the patient's status.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:738 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:666 (July 1991), LR 19:208 (February 1993), LR 21:1243 (November 1995), LR 23:

Subchapter B. Prohibitions

§307. Unauthorized Practice

A. ...

B. A physical therapist shall use the letters "P.T." in connection with his name or place of business to denote licensure. A physical therapist assistant shall use the letters "P.T.A." in connection with his name to denote licensure. No person shall hold himself out to the public, an individual patient a physician, dentist or podiatrist, or to any insurer or indemnity company or association or governmental authority as a physical therapist, physiotherapist or physical therapist assistant, nor shall any person directly or indirectly identify or designate himself as a physical therapist, physiotherapist, registered physical therapist, licensed physical therapist, physical therapist assistant, or licensed physical therapist assistant, nor use in connection with his name the letters, P.T., L.P.T., R.P.T., or P.T.A., or any other words, letters, abbreviations, insignias, or sign tending to indicate or imply that the person constitutes physical therapy, unless such person possesses a current license or temporary permit duly issued by the board.

C. A physical therapy student who is pursuing a course of study leading to a degree as a physical therapist in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education shall use the letters "S.P.T." in connection with his name while participating in this program. A physical therapist assistant student who is pursuing a course of study leading to a degree as a physical therapist assistant in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapist assisting education shall use the letters "S.P.T.A." in connection with his name while participating in this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 21:395 (April 1995), LR 23:

§309. Exemptions

A. - B. ...

C. A student shall be exempt from licensure when pursuing a course of study leading to a degree in physical therapy or physical therapist assisting in a professional education program approved by the board and is satisfying supervised clinical education requirements related to his education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 23:

Subchapter C. Supervised Practice

§317. General Supervision Requirements for Permittees

A. ...

B. - B.1. ...

2. not have been subject, within a period of three years prior to undertaking such responsibility, to administrative action or consent order by the board which resulted in sanction to his physical therapy license. The three year period shall commence upon satisfactory completion of the sanction.

3. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:667 (July 1991), LR 23:

§319. Additional Supervision Requirements for Foreign Graduate Physical Therapists

A. - B.1. ...

2. provide the board with a written certification, following the conclusion of a foreign graduate physical therapist's clinical training as required by 115.A.3, that the permittee has accumulated not less than 1,000 hours of actual clinical experience in the practice of physical therapy under the periodic and/or continuous supervision of the licensed physical therapist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:667 (July 1991), LR 19:208 (February 1993); LR 23:

§321. Supervision Requirements of Physical Therapy Supportive Personnel by a Physical Therapist

A. - C.2. ...

D. Student

1. The supervising physical therapist shall provide continuous, on-the-premises supervision of a student in all practice settings.

2. A physical therapist shall supervise no more than two students at any given time.

E. Supervision Ratio

1. A physical therapist shall not supervise:

a. more than three physical therapist assistants and/or aides/technicians at any one time;

b. more than two permittees at any one time; or

c. more than two students at any one time.

2. A supervising physical therapist must comply with the supervision ratios required in §321.E.1 and shall not exceed the maximum of a 1:5 ratio in any combination of such supervised individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2(A)3.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 23:

Pursuant to the Administrative Procedure Act, if oral presentation or argument is requested by the requisite number of persons or the proper entities, then a public hearing on these matters will be held on Thursday, October 30, 1997 at 10 a.m. at the office of the Board of Physical Therapy

Examiners, 2014 West Pinhook Road, Suite 701, Lafayette, LA, 70508. Please contact the board office at (318) 262-1043 to confirm whether or not the public hearing will be conducted.

Written comments concerning the proposed rules may be directed to this address and made to the attention of Sharon Toups, Chairman. Such comments should be submitted no later than the close of business at 4:30 p.m. on Friday, October 24, 1997.

Sharon Toups
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Licensure; Unauthorized Practice; and
Supervision**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The estimated implementation cost to the board for printing and distribution to its licensees of the rules which are promulgated will total approximately \$3,400, which is broken down as follows: (a) \$2,100 for printing of 3,000 books to be distributed; (b) \$1,100 in postage for distribution of such books; and (c) \$200 mailing cost with regard to the distribution. This is a one-time implementation cost to the board for the promulgation of these rules and distribution of same to its licensees.

**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 due to the proposed rule changes.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS
TO DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups secondary to this rule change proposal.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

There are two types of education of applicants for licensure to the board: first, applicants who are domestically educated in the U.S.; secondly, foreign-educated applicants who are educated in jurisdictions other than the U.S. The purpose of the proposed rules with regard to educational requirements of foreign-educated applicants is to clearly establish the substantial equivalent requirement to assure uniformity with the educational requirements of applicants educated in the U.S. The educational requirements which are sought to be implemented conform to the suggested requirements of the Federation of State Boards of Physical Therapy Examiners. Such rule promulgation is not intended to adversely affect competition and/or employment of foreign-educated applicants; however, such an impact may exist so as to exclude foreign-educated applicants who do not possess a substantial equivalent education and who are attempting to obtain licensure and thereafter compete in the marketplace. Once licensure is obtained, there is no distinction between domestic and foreign-educated practitioners in the work force. The board's mandate is to insure the safety of the consuming public regarding physical therapy services. There will be no effect on

competition or employment as a result of the other proposed rule changes.

Sharon A. Toups, P.T.
Chairman
9709#001

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Long-Term Hospital Reimbursement Methodology

The Department of Health and Hospitals, Bureau of Health Services Financing proposes 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 1997-98 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 proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Medicaid Program published reimbursement methodology for hospital services, including long-term acute hospitals, under specialty hospital peer groups in the June 20, 1994 rule (*Louisiana Register*, Volume 20, Number 6), and subsequently amended the percentile used to establish rates at the lowest blended per diem rate for each specialty hospital category without otherwise changing the methodology (*Louisiana Register*, Volume 22, Number 1). Reimbursement for psychiatric treatment in long-term acute hospitals was later disjoined from the methodology for other types of services provided in long-term acute hospitals to be paid at the same prospective per diem rate established for psychiatric treatment facilities (*Louisiana Register*, Volume 23, Number 2).

The proposed rule alters the percentile at which the components used in calculation of the rate for services, other than psychiatric services, provided by a long-term hospital are considered. Under this methodology, the per diem rate is based on the thirtieth percentile facility in the categories of operating costs, movable equipment, and fixed capital rather than the weighted average. The proposed rule does not otherwise alter the factors considered in setting rates or the calculations performed, nor does it affect criteria for participation, service quality expectations, or reporting requirements.

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing establishes reimbursement for inpatient services provided by long-term care hospitals, excluding psychiatric services, at a per diem rate based on the thirtieth percentile facility by cost category as reported in the

"as-filed" cost report for the hospital's fiscal year ending between July 1, 1995 and June 30, 1996. Cost categories include operating costs, movable equipment, and fixed capital. Subsequent year rates will be updated annually using the lower of the DRI Type Hospital Market Basket Index, the Consumer Price Index—All Urban Consumers, or the Medicare PPS Market Basket Index. This does not affect criteria for participation, service quality expectations, reporting requirements or alter the factors considered in setting rates and the calculations performed.

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

A public hearing will be held on this matter on Tuesday, October 28, 1997 at 9:30 a.m. in the 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 data, views, or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Long-Term Hospital Reimbursement Methodology

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that implementation of this proposed rule will decrease state program expenditures for long-term hospital reimbursement by approximately \$2,736,998 for SFY 1997-1998; \$2,826,624 for SFY 1998-1999; and \$2,911,422 for SFY 1999-2000. Included is \$50 for the state share of printing the rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that federal revenue collections for long-term hospital reimbursement will decrease by approximately \$6,497,206 for SFY 1997-1998; \$6,709,894 for SFY 1998-1999; and \$6,911,191 for SFY 1999-2000. Included is \$50 for the federal share of printing the rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
It is anticipated that the providers of long-term hospital services will experience the combined state and federal expenditure decreases of approximately \$9,234,204 for SFY 1997-1998; \$9,536,518 for SFY 1998-1999; and \$9,822,613 for SFY 1999-2000 for the provision of these services. A total of \$100 is included for printing this proposed rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no known effect on competition and employment.

Thomas D. Collins
Director
9709#078

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Mental Health Rehabilitation

The Department of Health and Hospitals, Bureau of Health Services Financing is proposing to amend 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 rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Mental Health Rehabilitation Program was adopted as an optional service program covered under the Medicaid Program, effective July 1, 1989 (*Louisiana Register*, Volume 19, Number 4). A subsequent rule was promulgated to amend the provisions governing recipient eligibility, service delivery requirements, and reimbursement methodology for Mental Health Rehabilitation Services (*Louisiana Register*, Volume 22, Number 6). In collaboration with the Office of Mental Health, the bureau proposes to amend the administrative requirements established in the June 20, 1996 rule to revise staff qualifications, functions, and frequency of reimbursement for providers of Mental Health Rehabilitation services.

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing adopts the following revisions in staff qualifications, function, and frequency of reimbursement under the Mental Health Rehabilitation Program:

I. - II. D. ...

III. Administrative Requirements

A. - B.1. ...

2. The clinical manager must provide clinical management of at least 12 hours for children and five hours for adults per quarter for high- and moderate-level-of-need consumers. The clinical management hours for low-level-of-need consumer must be three hours for adults and six hours for children per quarter.

3. - 8.c. ...

9. Mental Health Rehabilitation clinical managers must attend all mandated meetings conducted by the Office of Mental Health and/or the Bureau of Health Services Financing.

C. Staffing Definitions

All experience requirements indicated below are related to paid experience in an agency. Volunteer work, college work/study, or internship related to completion of a degree cannot be counted as work experience. If experience is in a part-time position, the staff person must be able to verify the amount of time worked each week. Experience obtained while working in a position for which the individual is not qualified may not be counted as experience.

An agency may appeal a decision on staff qualifications by submitting a request to the Bureau of Health Services Financing. The appeal will be heard on an individual basis by the assistant secretary of the Office of Mental Health and the

director of the Bureau of Health Services Financing or their designees. Examples of appeals include lack of available staff in a rural area; and employment of staff with extraordinary training and/or experience.

C.1 - 5.c. ...

d. a nurse who is licensed as a registered nurse in the State of Louisiana by the Board of Nursing and:

(1) is a graduate of an accredited master's-level program in psychiatric mental health nursing with two years of post-master's supervised experience in the delivery of mental health services; or

(2) has a master's degree in nursing or a mental health related field with two years of supervised post master's experience in the delivery of mental health services.

e. a licensed professional counselor who is licensed as such under the provision of R.S. 37:1101-1115; and

(1) whose initial date of licensure is on or after August 15, 1996; or

(2) who is endorsed by the Licensed Professional Counselor Board of Examiners as meeting all licensure conditions required on August 15, 1996.

f. *Mental Health Professional (MHP)*—an individual who is supervised by an LMHP and meets the following criteria:

(1) has a Master of Social Work degree; or has a Master of Arts degree in a mental health related field; a Master of Science degree in a mental health related field; or a Master of Education degree in a mental health related field; and

(2) has a minimum of 15 hours of graduate-level course work and/or practicum in applied intervention strategies/methods designed to address behavioral, emotional, and/or mental problems. These hours may have been obtained as a part of, or in addition to, the master's degree.

g. *Mental Health Specialist (MHS)*—an individual who is supervised by an LMHP or MHP and meets one or more of the following five criteria:

(1) has a Bachelor of Arts degree in a mental health related field; or

(2) has a Bachelor of Science degree in a mental health related field; or

(3) has a bachelor's degree and is a college student pursuing a graduate degree in a mental health related field and has completed at least two courses in that identified field; or

(4) has a high school degree or a GED; and has four years experience providing direct services in a mental health, physical health, social services, education or correctional setting; or

has two years experience as a mental health assistant in a mental health rehabilitation setting.

h. *Mental Health Assistant (MHA)*—an individual who is supervised by an LMHP or a MHP under the supervision of an LMHP and meets one or more of the following three criteria:

(1) has a high school degree or GED; and

(2) has one year documented history of serious mental illness or emotional/behavioral disorder as determined by the Office of Mental Health; or

(3) has two years documented history as the parent of a child diagnosed as emotionally/behaviorally disordered or seriously mentally ill.

i. Supervision. Each MHR agency must implement a plan for supervision according to the guidelines established by the Office of Mental Health.

D. Training

All agency staff, including volunteers and students, must undergo 16 hours of orientation; and nonLMHP staff must undergo an additional 16 hours of on-the-job training.

Orientation of at least 16 hours must be provided within one week of the date of employment by the Mental Health Rehabilitation Agency.

Eight hours of orientation must include the following content areas:

1. confidentiality;
2. rights protection and reporting of violations;
3. abuse and neglect policies and procedures;
4. emergency and safety procedures;
5. infection control;
6. agency policies and procedures;
7. ethics, including advertising and solicitation.

Eight hours of orientation must relate directly to serving persons with serious mental illness or emotional /behavioral disorder. Consumers and/or family members should be used as instructors for at least two hours of training.

Training is provided by persons with documented knowledge of the training topic and of the serious mental illness and/or emotional/behavioral disorder populations. On-the-job training of at least 16 hours must be provided to nonLMHP staff prior to the delivery of services for which a claim will be submitted. Training may involve observing and assisting a trained staff member in the delivery of Mental Health Rehabilitation services. Training must be provided within 45 days of employment for all direct care staff including, at a minimum:

- a. basic information about mental illness including, various rehabilitative approaches to services;
- b. training in prevention and management of aggressive behavior, using a nationally-recognized curriculum;
- c. cultural competency training designed to achieve respectfulness of differences and cultural proficiency related to the populations served by the Mental Health Rehabilitation Agency;
- d. first aid, Cardiopulmonary Resuscitation (CPR), and seizure assessment;

Note: Licensed physicians are exempt from first aid and seizure assessment training.

- e. implementation of a behavior management plan.

An additional 10 hours of training must be provided within 60 days of employment for all staff that provide psychosocial skills training. Training content, minimally, includes the philosophy, goals, and techniques of psychosocial skills training.

In addition to training specified above, each staff member must annually receive training that is specifically related to his or her job duties, including refresher courses:

(1) each full-time professional staff must receive at least 20 hours training per year;

(2) each full-time paraprofessional staff must receive at least 40 hours training per year;

(3) each part-time professional staff must receive at least 16 hours training per year;

(4) each part-time paraprofessional staff must receive at least 20 hours training per year.

IV. - V. ...

VI. Service Package

A. The individualized mix of services for any individual is specified on the 90-day action strategy of the MHR service agreement. The MHR service agreement is derived from the MHR assessment:

1. clinical management;
2. individual intervention;
3. supportive counseling;
4. parent/family intervention;
5. group counseling;
6. medication management;
7. behavior intervention plan development;
8. individual psycho social skills training;
9. group psycho social skills training;
10. service integration.

B. Staff Qualifications

Minimum qualifications for staff performing Mental Health Rehabilitation functions are as follows:

Staff Function	Qualifications
Agency Administration/Direction	Acceptance by Provider Enrollment
Mental Health Rehabilitation Program Direction	(a) LMHP; or (b) an individual with six years experience in the mental health field.
Psychiatric Director	Board-certified or board-eligible psychiatrist.
Clinical Management	LMHP
Individual Intervention Supportive Counseling Parent/Family Intervention Group Counseling Behavior Intervention Development Medication Monitoring Medication Education	LMHP or MHP under the supervision of a LMHP All individuals qualified to provide counseling services prior to the effective date of this rule may continue to provide counseling services with the agency employing them on that date. If the individual changes agencies the new staff requirements for counseling must be met. These individuals must be supervised by a LMHP.
Medication Administration	(a) Physician, preferably psychiatrist; or (b) Licensed nurse; or (c) Legally-approved person under supervision of a physician, preferably a psychiatrist

Psychosocial Skills trainer	LMHP or MHP or Mental Health Specialist under the supervision of a MHP or LMHP
Service Integration	Mental Health Assistant under the supervision of a LMHP or MHP
Supervisor	<p>LMHP and three years post graduate experience working with persons who are seriously mentally ill, at least one year of which was supervisory, management, or administrative experience.</p> <p>Supervisors of staff serving children have at least two years experience working with children with emotional/behavioral disorders.</p> <p>Supervisors of staff serving adults have at least two years experience working with adults with serious mental illness.</p>

VII. Reimbursement

The fee for the initial assessment will be a single fee paid annually. The initial assessment fee includes all components of the MHR assessment, as well as services needed during the assessment period. The assessment includes a minimum of 10 hours of contact time with the consumer, family, significant others, and key informants. The annual reassessment is completed in the format outlined by the Office of Mental Health and is paid annually.

Adult assessment/service agreement \$ 700

Child/youth assessment/service agreement \$ 800

Reimbursement is made by a prospective, negotiated, and noncapitated rate based on the delivery of services as specified in the service agreement and the service package, as required for the adult and child/youth populations. Services are reimbursed based on services specified in the 90-day action strategy plan and are paid monthly, contingent upon the delivery of at least 80 percent of the prorated services approved in the 90-day MHR service agreement. Agencies must always strive to provide 100 percent of the services as agreed to in the service agreement. As Medicaid recipients progress in their rehabilitation services and the level of need decreases, services will transition from the high to medium and/or low level of need. Reimbursement will be made in the amounts specified below for the medium and low levels of need, as determined by the bureau or its designee:

	Adult		Child/Youth
High Need	\$1300	High Need	\$1375
Medium Need	\$ 550	Medium Need	\$ 800
Low Need	\$ 250	Low Need	\$ 250

VIII. ...

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box

91030, Baton Rouge, LA. 70821. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter on Tuesday, October 28, 1997 at 9:30 a.m. in the 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 data, views, or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Mental Health Rehabilitation

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no fiscal impact resulting from the implementation of this proposed rule for SFYs 1998, 1999, and 2000; however, \$160 for the state share of printing this rule will be incurred in SFY 1998.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Federal revenue collections will reflect \$160 for the promulgation of this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that there will be no fiscal impact from this proposed rule. This rule amends the provisions governing staff qualifications, functions, and frequency of reimbursement for mental health rehabilitation services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known impact on competition and employment.

Thomas D. Collins
Director
9709#087

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Private Intermediate Care Facility for the
Mentally Retarded—Qualifying Loss Review**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt 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 proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing published a

rule to establish a reimbursement methodology for private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) (*Louisiana Register*, Volume 15, Number 10). The department now proposes to amend the October 1989 rule to incorporate a qualifying loss review process for private intermediate care facilities for mentally retarded seeking an adjustment to the per diem rate. *Qualifying loss* in this context refers to that estimated amount by which the facility's cost for the affected rate period exceeds the anticipated Title XIX Medicaid reimbursement. *Cost* in this context means a facility's allowable cost incurred in providing covered services to Title XIX Medicaid recipients, as based on Louisiana's *ICF/MR Standards for Payment Manual*. The qualifying loss provision is only applicable to reductions in rates due to rebasing.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the rule governing the reimbursement of private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) to incorporate the following qualifying loss review process for those facilities seeking an adjustment to their per diem rates.

XI. Qualifying Loss Review Process

A. Basis for Administrative Review

1. Allowable Basis. The following matters are subject to a qualifying loss review:

a. that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied;

b. that incorrect data or erroneous calculations were used;

c. the facility demonstrates that the estimated reimbursement, based on its prospective rate, is less than 95 percent of the estimated costs to be incurred by the facility in providing Medicaid services during the period the rate is in effect in compliance with the applicable state and federal laws related to quality and safety standards.

2. Nonallowable Basis. The following matters are not subject to a qualifying loss review:

a. the methodology used to establish the per diem;

b. the use of audited and/or desk reviews to determine allowable costs;

c. the economic indicators used in the rate-setting methodology;

d. rate adjustments related to changes in federal or state laws, rules, or regulations (e.g., minimum wage adjustments);

e. rate adjustments related to reduction or elimination of extraordinary rates.

B. Request for Administrative Review. Any intermediate care facility for the mentally retarded (hereafter referred to as facility) seeking an adjustment to the per diem rate shall submit a written request for administrative review to the director of Institutional Reimbursements (hereafter referred to as director) in the Department of Health and Hospitals (hereafter referred to as department).

1. Time Frames

a. Requests for administrative review must be received by DHH within 30 days of either receipt of

notification of rate reduction or promulgation of this rule, whichever is later. The receipt of the letter notifying the facility of its rates will be deemed to be five days from the date of the letter.

b. The department shall acknowledge receipt of the written request within 30 days after actual receipt.

c. The director shall notify the facility of his decision within a reasonable time after receipt of all necessary documentation, including additional documentation or information requested after the initial request is received. Failure to provide a decision within a reasonable time does not imply approval.

d. If the facility wishes to appeal the director's decision, the appeal request must be received by the Bureau of Appeals within 30 days after receipt of the written decision of the director. The receipt of the decision is deemed to be five days from the date of the decision.

2. Content of the Request. The facility shall bear the burden of proof in establishing the facts and circumstances necessary to support a rate adjustment. Any costs that the provider cites as a basis for relief under this provision must be calculable and audit able.

a. Basis of the Request. Any facility seeking an adjustment to the per diem rate must specify all of the following:

i. the nature of the adjustment sought;

ii. the amount of the adjustment sought;

iii. the reasons or factors that the facility believes justify an adjustment.

b. Financial Analysis. An analysis demonstrating the extent to which the facility is incurring, or expects to incur, a qualifying loss shall be provided by the facility unless the basis for review is one of the following:

i. the rate setting methodology or criteria for classifying facilities were incorrectly applied; or

ii. incorrect data or erroneous calculations were used in establishment of the facility's per diem; or

iii. the facility has incurred additional costs because of a catastrophe.

C. Basis for Rate Adjustment

1. Factors Considered. The department shall award additional reimbursement to a facility that demonstrates by substantiating evidence that:

a. the facility will incur a qualifying loss;

b. the loss will impair a facility's ability to provide services in accordance with state and federal health and safety standards;

c. the facility has satisfactorily demonstrated that it has taken all appropriate steps to eliminate management practices resulting in unnecessary expenditures; and

d. the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size Level of Care (LOC).

2. Determination to Award Relief. In determining whether to award additional reimbursement to a facility that has made the showing required, the director shall consider one or more of the factors and may take any of the following actions:

a. the director shall consider whether the facility has demonstrated that its nonreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size LOC. Such factors may include, but are not limited to, extraordinary circumstances beyond the control of the facility; or

b. the director may consider, and may require the facility to provide financial data, including but not limited to, financial ratio data indicative of the facility's performance quality in particular areas of operations; or

c. the director shall consider whether the facility has taken every reasonable action to contain costs on a facility-wide basis. In making such a determination, the director may require the facility to provide audited cost data or other quantitative data and information about actions that the facility has taken to contain costs.

D. Awarding Relief. The director shall make notification of the decision to award or not award relief in writing.

1. Basis of Adverse Decision

a. The director may determine that the review request is not within the scope of the purpose for qualifying loss review.

b. The director may determine that the information presented does not support the request for rate adjustment.

2. Adverse Decision Appeal. Adverse decisions may be appealed to the Office of the Secretary, Bureau of Appeals for the Department of Health and Hospitals, Box 4183, Baton Rouge, LA 70821-4183 within 30 days of receipt of the decision.

2. Awarding Relief

a. Action by Director. In awarding relief under this provision, the director shall:

i. make any necessary adjustment so as to correctly apply the reimbursement methodology to the facility submitting the appeal, or to correct calculations, data errors, or omissions; or

ii. increase the facility's per diem rate by an amount that can reasonably be expected to ensure continuing access to sufficient services of adequate quality for Title XIX Medicaid recipients served by the facility.

b. Scope of Decisions. Decisions by the director to recognize omitted, additional, or increased costs incurred by any facility; to adjust the facility rates; or to otherwise award additional reimbursement to any facility shall not result in any change in the bed size LOC per diem for the remaining facilities in the bed size LOC, except that the department may adjust the per diem if the facilities receiving adjustment comprise over 10 percent of total utilization for that bed size LOC, based on the latest audited and/or desk reviewed cost reports.

c. Effective Date. The effective date of the adjustment shall be the later of:

i. the date of occurrence of the rate change upon which the rate appeal is in response; or

ii. the effective date of this rule.

d. Limitations. The director shall not award relief to a provider in excess of 95 percent of appellant facility's cost coverage determined by inflationary trending of the year on which rates are based. The rate adjustment shall also be

limited to no more than the amount of the rate for the previous rate year. Any facility awarded relief shall be audited and cost settled up to, but not over, the amount of the adjusted rate. Should a single facility that is an entity under common ownership or control with another facility or group of facilities be awarded relief, all facilities under common ownership or control with the facility awarded relief will be subject to audit and cost settlement up to, but not over, the amount of their rates.

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

A public hearing will be held on this matter on Tuesday, October 28, 1997, at 9:30 a.m. in the 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 data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**
**RULE TITLE: Private Intermediate Care Facility for the
Mentally Retarded—Qualifying Loss Review**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will result in increased expenditures for private ICF/MR facility services of approximately \$274,943 for SFY 1997-98; \$283,832 for SFY 1998-99; and \$292,348 for SFY 1999-2000. Included is \$105 for the state share of printing the rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that federal revenue collections for private ICF/MR facility services will increase by approximately \$652,521 for SFY 1997-98; \$673,768 for SFY 1998-99; and \$693,329 for SFY 1999-2000. Included is \$105 for the federal share of printing the rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that the providers of the private ICF/MR facility will experience the combined state and federal expenditure increases shown above of approximately \$927,464 for SFY 1997-9; \$957,600 for SFY 1998-99; and \$986,329 for SFY 1999-2000 for the provision of an adjustment to the per diem rate for Private ICF/MRs. Included is \$210 for printing the rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9709#083

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 28—Variable Contract

Under the authority of R.S. 22:1500 and the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice that the following proposed regulation is to be adopted and become effective March 1, 1998. This intended action complies with the statutory law administered by the Department of Insurance.

Existing Regulation 28 of the Department of Insurance is to be repealed as of the effective date of this proposed regulation.

Proposed Rule

Regulation 28. Variable Contract

Section 1. Authority

This regulation is adopted and promulgated by the Department of Insurance pursuant to the authority granted by R.S. 22:1500 and the Administrative Procedure Act, R.S. 49:950 et seq. This regulation replaces and repeals the regulation of similar purpose which took effect on January 1, 1969.

Section 2. Definitions

Agent—any person, corporation, partnership, or other legal entity which, under the laws of this state, is licensed as an insurance agent.

Company—any insurer which possesses a certificate of authority to conduct life insurance business or annuity business in the state of Louisiana.

Contract on a Variable Basis or Variable Contract—any policy or contract which provides for annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to such policy or contract, as provided for in R.S. 22:1500.

Variable Contract Agent—an agent who shall sell or offer to sell any contract on a variable basis.

Section 3. Qualifications of Insurance Companies to Issue Variable Contracts

A. No company shall deliver or issue for delivery variable contracts within this state unless the commissioner is satisfied that its condition and method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider the following in making such a determination:

1. the history and financial condition of the company;
2. the character, responsibility, and fitness of the officers and directors of the company; and
3. the law and regulation under which the company is authorized in the state of domicile to issue variable contracts.

B. A company's subsidiary or affiliate, by common management or ownership, may be deemed by the commissioner to have satisfied the provisions of Subsection A.2 of this Section if either the company or its subsidiary or affiliate satisfies the provisions of Subsection A.2 of this Section, provided, further, that companies having a

satisfactory record of doing business in this state for a period of at least three years may be deemed to have satisfied the commissioner with respect to Subsection A.2 of this Section.

C. Before any company shall deliver or issue for delivery variable contracts, it shall submit to the commissioner:

1. a general description of the kinds of variable contracts it intends to issue;
2. if requested by the commissioner, a copy of the statutes and regulations of its state of domicile under which it is authorized to issue variable contracts; and
3. if requested by the commissioner, biographical data with respect to officers and directors of the company.

Section 4. Separate Account or Separate Accounts

A. A domestic company issuing variable contracts shall establish one or more separate accounts pursuant to R.S. 22:1500.

1. Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation or, if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account, provided that the portion of the assets of such separate account equal to the company's reserve liability with regard to the benefits guaranteed as to amount and duration, and funds guaranteed as to principal amount or stated rate of interest shall be valued in accordance with the rules otherwise applicable to the company's asset.

2. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

3.a. Notwithstanding any other provision of law, a company may:

i. with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such accounts ratably, as determined by the company; or

ii. with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interests in such account ratably, as determined by the company. Such committee, board, or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets.

b. A company, committee, board, or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect, provided that the commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.

4. No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made:

- a. by a transfer of cash; or
- b. by a transfer of securities having a valuation which could be readily determined in the marketplace, and provided that such transfer of securities is approved by the commissioner. The commissioner may authorize other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

5. The company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the commissioner.

6. Rules under any provision of R.S. 22:1500 or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee, board, or other similar body. No officers or directors of such company nor any member of the committee, board, or separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.

Section 5. Filing of Contracts

The filing requirements applicable to variable contracts shall be those filing requirements otherwise applicable under existing statutes and regulations of this state with respect to individual and group life insurance and annuity contract form filings, to the extent appropriate.

Section 6. Contracts Providing for Variable Benefits

A. Any variable contract delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of benefits. Any such contract providing benefits which vary during the payment period, including a group contract and any certificate issued thereunder, shall state that the periodic payments will vary to reflect investment experience and shall contain, on its first page, a clear statement to the effect that the periodic payments thereunder are on a variable basis. Any such contract which provides values which are vested in an annuitant under an individual contract or in the holder of a certificate under a group contract prior to the commencement of the payment period, which values will vary to reflect investment experience, shall state that such values are on the variable basis. Any certificate issued under a group contract providing such variable values shall also contain the statements required by the preceding sentence. If any such contract provides such variable periodic payments, as well as such variable values, the statements required by the preceding sentences may be combined.

B. Illustrations of benefits payable under any variable contract shall not include projections of past investment

experience into the future or attempted predictions of future investment experience, provided that nothing contained herein is intended to prohibit use of hypothetical assumed rates of return to illustrate possible levels of annuity payments.

C.1. Any individual variable annuity contract delivered or issued for delivery in this state shall stipulate the investment increment factors to be used in computing the dollar amount of variable benefits or other contractual payments or values thereunder, and may guarantee that expenses and/or mortality results shall not adversely affect such dollar amounts. If not guaranteed, the expense and mortality factors shall also be stipulated in the contract.

2. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

a. the annual net investment increment assumption shall not exceed 5 percent, except with the approval of the commissioner;

b. to the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the commissioner, from another table.

3. *Expense*, as used in this Subsection, may exclude some or all taxes, as stipulated in the contract.

4. Variable annuity contracts delivered or issued for delivery in this state may include as an incidental benefits provision for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at the time of death; such provisions will not be deemed to be contracts of life insurance and therefore not subject to the provisions of the Insurance Law governing life insurance. Provision for any other benefit on death during the deferred period will be subject to such insurance provisions.

5. The reserve liability for variable annuities shall be established pursuant to the requirements of the standard valuation law, in accordance with actuarial procedures that recognize the variable nature of the benefits provided.

Section 7. Required Reports

A. Any company issuing individual variable contracts providing benefits in variable amounts shall mail to the contract holder, at least once in each contract year after the first, at his last address known to the company, a statement or statements reporting the investments held in the separate account, and in the case of contracts under which payments have not yet commenced, a statement reporting as of a date not more than four months previous to the date of mailing:

1. the number of accumulation units credited to such contracts and the dollar value of a unit; or

2. the value of the contract holder's account.

B. The company shall submit annually to the insurance commissioner a statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners.

Section 8. Foreign Companies

If the law or regulation in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these regulations, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or regulation as compliance with these regulations.

Section 9. Licensing of Agents and Other Persons

A.1. No agent shall be eligible to sell or offer for sale a contract on a variable basis unless, prior to making any solicitation or sale of such a contract, that agent is licensed to sell life insurance in this state and presents evidence of satisfactorily passing one of the following written examinations upon securities and variable contracts:

a. any state securities examination accepted by the Securities and Exchange Commission;

b. the National Association of Securities Dealers, Inc. examination for principals or examination for qualification as a registered representative;

c. the various securities examinations required by the New York Stock Exchange, the American Stock Exchange, the Pacific Stock Exchange, or any other registered national securities exchange;

d. the Securities and Exchange Commission test given pursuant to Section 15(b)(8) of the Securities Exchange Act of 1934.

2. Any agent who participates only in the sale or offering for sale of variable contracts that are not registered under the Federal Securities Act of 1933 need not be licensed as a variable contract agent.

3. Any agent applying for a license as a variable contract agent shall do so by filing an application. All applications for a license shall be in writing on uniform forms prescribed by the commissioner of Insurance.

B. Any applicant for license as a variable contract agent shall present evidence that the applicant is currently registered with the Federal Securities and Exchange Commission as a broker-dealer or is currently associated with a broker-dealer and has met qualification requirements with respect to such association.

C. Except as modified by this regulation, refer to Part XXIV and Insurance Regulations of this department governing the licensing of life insurance agents.

D. Any person licensed in this state as a variable contract agent shall immediately report to the commissioner:

1. any suspension or revocation of the agent's variable contract license or life insurance license in any other state or territory of the United States;

2. the imposition of any disciplinary sanctions (including the suspension or expulsion from membership, suspension or revocation of or denial of registration) imposed upon him/her by the National Securities Exchange, The National Securities Association, or any federal, state, or territorial agency with jurisdiction over securities or contracts on a variable basis;

3. any judgment or injunction entered against him/her on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

E. The commissioner may reject any application or suspend, revoke, or refuse to renew any agent's variable contract license upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's life insurance license shall also govern any proceeding for suspension or revocation of an agent's variable contract license.

F. An agent's variable contract license shall be renewed annually upon the approval of a variable contract agent appointment. A certificate of license status dated within 90 days must be submitted with the appointment for any nonresident agent.

Interested persons may submit oral or written comments to Lester Dunlap, Assistant Commissioner, Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214, telephone (504) 342-5415. Comments will be accepted through the close of business at 4:30 p.m., October 28, 1997.

A public hearing on this proposed amended regulation will be held at 9 a.m., October 28, 1997, 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.

James H. "Jim" Brown
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 28—Variable Contract

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is not anticipated that the Department of Insurance will incur any costs or savings as a result of implementing this amended regulation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Adoption of this amended regulation will not have any effect on revenue collections by state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be a very slight positive impact (approximately \$26,000 statewide total per year) to roughly 400 agents who apply for variable annuity licenses each year. They will no longer be required to pay the testing fee of \$65 each to the company under contract to administer agent licensing examinations for the Department of Insurance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that this amended regulation would have any effect on employment or competition.

Brenda St. Romain
Assistant Commissioner
Management and Finance
9709#085

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Juvenile Transfer to Adult Facility (LAC 22:I.335)

In accordance with the Administrative Procedure Act, R.S. 49:953(B) and in order to implement R.S. 15:9021, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to adopt regulations for transfer of juveniles to adult offenders.

This proposed rule was adopted as an emergency rule effective August 4, 1997 and appeared on page 937 of the August 1997 *Louisiana Register*.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter A. General

§335. Juvenile Transfer to Adult Facility

A. Purpose. To establish the secretary's policy regarding the limited transfer of juvenile offenders 17 years of age or older to adult facilities.

B. To Whom This Regulation Applies. LAC 22:I.335 is applicable to the deputy secretary, assistant secretaries, wardens, and director of the Division of Youth Services of the Department of Public Safety and Corrections.

C. Definitions

Adult—an individual convicted by a criminal court and sentenced to the custody of the Department of Public Safety and Corrections (DPS&C).

Disposition—the written order of the juvenile court, following adjudication, which specifies the court's sentence.

Juvenile—an individual who is adjudicated delinquent by a judge exercising juvenile jurisdiction and sentenced to the custody of the DPS&C.

D. Policy

1. It is the secretary's policy, in accordance with R.S. 15:902.1, to authorize the limited transfer of juveniles adjudicated delinquent to adult facilities when the juveniles have attained the age of 17 years *and* are otherwise eligible as defined by this regulation.

2. Juvenile offenders who are adjudicated delinquent for an offense that, if committed by an adult, could not result in a sentence at hard labor, are not eligible for transfer.

3. Generally, juvenile offenders will be transferred to one of the following adult facilities:

- a. Adult Reception and Diagnostic Center (ARDC);
- b. Elayn Hunt Correctional Center (EHCC);
- c. Wade Reception and Diagnostic Center (WRDC);
- d. David Wade Correctional Center (DWCC);
- e. Louisiana Correctional Institute for Women (LCIW).

4. Juvenile offenders in adult facilities will not have a parole or diminution of sentence release date.

a. They will only have a "full term date." This date will be either:

- i. their twenty-first birthday;
- ii. their eighteenth birthday if the crime was committed before their thirteenth birthday and it is not a crime enumerated under *Louisiana Children's Code*, Article 897.1;
- iii. the date upon which the juvenile has completed the period of commitment as specified in the judgment of the juvenile court; or
- iv. the date which reflects the maximum term that an adult could receive if sentenced for the same offense, whichever is earlier.

b. If the period of commitment specified by the juvenile court exceeds the twenty-first birthday, the eighteenth birthday under circumstances outlined, or the maximum term for which an adult could be sentenced for the same crime, then the Office of Youth Development and the Headquarters Legal Section should be notified immediately.

5. Absent special statutory or regulatory restrictions to the contrary, juveniles in adult facilities will participate in all work, education, and other rehabilitative programs on the same basis as adults and will be subject to the same classification and disciplinary processes as adults, including custody status determination. Security supervision and security practices will also be the same for juvenile offenders in adult facilities as for adult inmates.

6. Records of juveniles housed in adult facilities shall be confidential and information may not be disclosed to *anyone* except in accordance with department Regulation No. B-03-003, "Access to and Release of Juvenile Offender and Ex-Offender Records", as set forth in LSA-R.S. 15:574.12 and *Louisiana Children's Code*, Article 412.

E. Procedures

1. A classification committee will be formed at all juvenile facilities to review offenders for eligibility and suitability for transfer and to make appropriate recommendations to the warden. It will be the responsibility of this committee to review all relevant information.

a. The following variables should be considered by the classification committee when evaluating a juvenile offender for possible transfer to an adult facility:

- i. chronological age of 17 years or older;
- ii. emotional and physical maturity;
- iii. disciplinary history and potential to disrupt juvenile institutional operations;
- iv. potential to benefit from educational programs;
- v. potential to benefit from other programs;
- vi. offenders diagnosed with mental health and/or medical special needs who can be better served in an adult facility;
- vii. offenders who pose a threat to security, i.e. who are considered escape risks, who have exhibited violent behavior, who are committed for serious offense(s), or who have an extensive criminal history;
- viii. to accomplish one of the following objectives:
 - (a). minimize risk to the public;
 - (b). minimize risk to institutional staff;
 - (c). minimize risk to other offenders.

b. Disciplinary history may impact the recommendation, but the transfer itself is not a disciplinary sanction or disciplinary activity. The disciplinary committee can refer offenders to the classification committee for review.

2. The warden of each juvenile facility will review the recommendation made by the classification committee and will make the final determination relative to transfer. The secretary and assistant secretaries will be notified of any transfer. In addition, the warden will notify the appropriate juvenile judge, Division of Youth Services Office, the legal guardian, and the classification administrator at ARDC of the proposed transfer.

3. Notification to the classification administrator at ARDC should include pertinent information, e.g., the Juvenile Information Reporting Management System (JIRMS) master record, judicial commitment documents, classification committee report and recommendation, and warden's decision. ARDC PreClass Section will then assign a unique six digit Department of Corrections (DOC) number to each juvenile-in-adult custody, (such number will begin with the numeral seven followed by the juvenile's original JIRMS number), update the CAJUN II information, and establish the adult institutional record prior to transfer (except in emergency cases). The classification administrator will schedule the date of transfer and will notify the appropriate juvenile institution.

4. The sending facility will be responsible for the transportation of the offender to the appropriate receiving institution and will provide all institutional and medical records at the time of transfer in accordance with department Regulation No. B-06-001, "Health Care." The offender's personal funds should be transmitted by check at the time of transfer or as soon as possible thereafter. In addition, the JIRMS transfer screen will be updated to reflect the transfer and will be subsequently utilized for inquiry purposes.

5. Once transferred to an adult facility, a juvenile will not be returned to a secure juvenile facility within the DPS&C. In addition, any subsequent placement in a nonsecure residential juvenile program would generally be considered inappropriate.

6. Initial evaluation to determine appropriate housing while in the reception process should include evaluation of emotional and physical maturity.

7. ARDC, WRDC, or LCIW will conduct a full evaluation in accordance with department regulations and ACA Standards to determine subsequent placement at EHCC or DWCC (or suitable housing assignment at LCIW). The evaluation will include, but is not limited to, the following:

- a. emotional and physical maturity to evaluate the need for assignment to Level 1 or Level 2 protective custody;
- b. review of information previously generated by JRDC, as available;
- c. history of gang affiliation and prior juvenile institutional assignment and security history;
- d. special educational needs or other programming needs and the appropriateness of assignment to academic and/or vocational programs;
- e. medical needs, including substance abuse assessment, and assignment of an appropriate medical level of care;

f. mental health needs with particular emphasis on suicide potential and assignment of an appropriate mental health level of care;

g. consideration of geographical location.

8. Upon completion of evaluation, the Transfer Section at ARDC will schedule transfer to the appropriate permanent facility.

9. The receiving institution will assign housing and provide services as set forth in department regulations and American Correctional Association (ACA) Standards. The records office of the receiving institution will maintain the juvenile institutional record and the adult inmate record and will update the CAJUN database. Upon discharge, all institutional records will be returned to the Juvenile Reception and Diagnostic Center at Jetson Correctional Center for Youth.

10. The adult facility must report the location and condition of the juvenile to the juvenile court every six months (or more frequently if requested). This format may be utilized to make early release recommendations as appropriate.

11. Sex offender notifications are generally not applicable to juvenile offenders housed in adult facilities. Other crime victim notice requirements for juveniles as indicated in department Regulation No. C-01-007, "Crime Victims Services Bureau" are applicable.

12. Visiting lists will be established pursuant to the provisions of department Regulation No. C-03-006, "Inmate Visitation." These transfers are to be considered as new admissions for the purposes of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:902.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 23:

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (504) 342-6741. Comments will be accepted through the close of business at 4:30 p.m. on October 20, 1997.

Richard L. Stalder
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Juvenile Transfer to Adult Facility

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No fiscal impact is anticipated. This proposed rule will allow the department to transfer certain adjudicated juvenile delinquents to adult facilities. These juvenile beds will then be filled by juveniles awaiting intake into the system. Since the total number of juvenile beds and adult beds is not affected by this rule, no fiscal impact is expected.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state and local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no additional costs or economic benefits directly affecting persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment.

Trey Boudreaux
Undersecretary
9709#051

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Hearings and Appeals (LAC 42:III.108 and 114); Video Draw Poker—Application and License (LAC 42:XI.2405); Riverboat Gaming—Vendor Recommendations/Solicitations, Surveillance and Security (LAC 42:III.108 and 114; XI.2405; XIII.2325 and 3301)

The Gaming Control Board hereby gives notice that it intends to adopt LAC 42:III.114 and to amend LAC 42:III.108, LAC 42:XI.2405, and LAC 42:XIII.2325 and 3301 in accordance with R.S. 27:1 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part III. Gaming Control Board

Chapter 1. General Provisions

§108. Board Hearings

A. Any person against whom an administrative action is proposed, and any person against whom an enforcement action is taken, may request a hearing by filing a written request with the board. The request shall be filed within 10 days of the date of receipt of the certified mailing or personal service of the notice of proposed action or within 10 days of the date the enforcement action is taken. All hearings shall be conducted in accordance with this Section.

E. The record shall be considered received by the hearing officer for the purposes of R.S. 27:25(B)(3) only upon receipt of the transcript of the hearing, all briefs either requested or allowed by the hearing officer, and all evidence which the hearing officer orders be made part of the record after the hearing.

F. All briefs submitted to the hearing officer or to the board shall be on 8½" x 11" paper and shall not exceed 15 pages unless approved by the hearing officer or chairman. No less than 10-point and 12-character-per-inch typeface shall be used. A margin of at least 1 inch at the top and bottom of each page shall be maintained. Footnotes may be single spaced but shall not be used to circumvent the spirit of this rule.

G.1. All motions, briefs, requests for discovery and any other pleading filed with the board shall be served on the adverse party on the same day, either by mailing or delivering

a copy thereof to the adverse party at his last known address, or to his counsel of record.

2. Where service is made by mail or delivery, the party or counsel making the service shall file in the record a certificate of the manner in which service was made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:77 (January 1997), amended LR 23:

§114. Appeals to the Board

Appeals to the board shall be decided on the record. Briefs shall be submitted only if allowed by the board at the written request of the party. The appeal may be assigned and scheduled for oral argument on request of the parties at the discretion of the board. In the event briefs are filed and/or the appeal scheduled for oral argument, the time period required for the board to render a decision shall be 60 days after the receipt of all briefs or the date of the oral argument, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2405. Application and License

D. Change of Ownership of Licensed Establishment

7. All device owners shall immediately notify the division, in writing, of any and all facts within their knowledge indicating that a licensed establishment for whom the device owner provides devices or services has had a change of ownership or management. Failure to notify the division as provided in this Subsection shall constitute grounds for suspension or revocation of the device owner's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

Part XIII. Riverboat Gaming

Subpart 2. State Police Riverboat Gaming Division

Chapter 23. Compliance, Inspections and Investigations

§2325. Notification of Vendor Recommendations or Solicitations

A. All persons licensed to conduct riverboat gaming operations shall, within five days of the date of occurrence, report, in writing, to the Gaming Control Board the name, address, and telephone number of any person or legal entity who or which recommends to or solicits through any agent, employee or representative, for the purpose of the licensee considering the purchase of goods and/or services from a particular vendor. The licensee shall report the name, address, and telephone number of the vendor to the board within five days of the recommendation or solicitation.

B. *Vendor*, for the purposes of this rule, shall include, but is not limited to, any manufacturer, distributor, gaming supplier, nongaming supplier, junket representative, professional, independent contractor, consultant, or other person in the business of providing goods and services regardless of whether required to be licensed, permitted, or registered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

Chapter 33. Surveillance and Security

§3301. Required Surveillance Equipment

A. The holder of an operator's license shall install in the riverboat a closed circuit television system, in accordance with the specifications herein, and shall provide for access at all times to the system or its signal by agents of the division. The closed circuit television system must meet or exceed specifications established by the division to include:

1. solid state, black and white cameras, as approved by the division, installed in fixed positions with matrix control and/or with pan, tilt, and zoom capabilities, secreted from public and nonsurveillance personnel view to effectively and clandestinely monitor in detail, from various vantage points, the following:

* * *

2. individual solid state, color television cameras, as approved by the division, with matrix control and/or pan, tilt, and zoom capabilities, secreted from public and nonsurveillance personnel view, augmented with appropriate color corrected lighting to effectively and clandestinely monitor in detail, from various vantage points, the following:

* * *

10. video tape recorders, as approved by the division, capable of producing high quality first generation pictures and recording on a standard ½-inch VHS tape with high speed scanning and flickerless playback capabilities in real time, or other medium approved by the division. Such videotape recorders must possess time and date insertion capabilities for taping what is being viewed by any camera in the system.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:702 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:

All interested persons may contact Tom Warner, Deputy Director, Attorney General's Gaming Division, telephone (504) 342-2465, and may submit written comments relative to these proposed rules through October 10, 1997, to 339 Florida Boulevard, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Hearings and Appeals; Video Draw Poker—Application and License; Riverboat Gaming—Vendor Recommendations/Solicitations, Surveillance and Security

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no implementation costs to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is 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)
No significant costs and/or economic benefits to directly affected persons or nongovernmental groups are estimated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect on competition or employment is estimated.

Hillary J. Crain
Chairman
9709#021

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of the State Fire Marshal

Comprehensive Rule Revisions
(LAC 55:V.Chapters 1-23)

In accordance with the provisions of R.S. 49:950 et seq., and R.S. 40:1651(B), relative to the authority of the Office of the State Fire Marshal to promulgate and enforce rules and regulations, notice is hereby given that the Office of the State Fire Marshal proposes to amend the following rules:

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 1. Preliminary Provisions

§101. Request for Rule Change

Anyone petitioning the assistant secretary of the Department of Public Safety, Office of State Fire Marshal, commonly known as the Louisiana State Fire Marshal, for the adoption of, or change of, any rule shall submit in writing to the fire marshal at 5150 Florida Boulevard, Baton Rouge, Louisiana 70806, an application containing the following basic information organized and captioned:

1. the name, address, and telephone number of the applicant. If the applicant is not the owner, the application must contain the owner's written statement giving the applicant authority to file the appeal on the owner's behalf. This written authorization shall include a certification that the individual, partnership, or corporation identified as the owner is, in fact, the owner of the property in question and that the

owner is familiar with the basis and the facts upon which the appeal is made. The mailing address and telephone number of the owner must be included in the written authorization. The singular utilized herein refers as well to the plural;

2. a brief description of the facts supporting the applicant's request for the adoption of a rule or the change of a rule that has already been adopted;

3. suggested specific language or language setting forth the substance of the rule or rule change which is being requested;

4. an indication as to whether or not a public hearing is requested;

5. a copy of each and every document upon which the applicant bases his request for a rule or a citation of the information and where it can be easily obtained for review by this office;

a. whenever the fire marshal determines that a public hearing or public hearings should be held prior to the adoption of any rule or rule change, a notice of the meeting date and place and the agenda will be recorded in the *Louisiana Register*; however, whenever that is not possible, a copy of the meeting notice including the date, time, and place, and agenda of the meeting will be mailed to the official journals of the cities of Shreveport, Monroe, Lafayette, Lake Charles, Alexandria, New Orleans, and Baton Rouge, and any city or town in which the public hearing is to be held if it is not in one of the aforementioned major cities; and the same information shall also be mailed to each individual who has notified the Fire Marshal of his desire to receive a notice of the adoption of or change of any rule;

b. within 90 days of the request for adoption of or change of a rule, the fire marshal will notify the applicant and each individual who requests a copy of either his denial of the application or notice of intent to adopt the requested rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:465 (November 1978), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 6:71 (February 1980), LR 23:

§103. General Provisions

A. It shall be the policy of the state fire marshal that in all instances or specifications provided in the statutes or in the codes referenced by the statutes, or by any specific references in administrative rulings by the state fire marshal, that the *National Fire Codes* published by the National Fire Protection Association and the *Standard Building Code* shall be used as the references and standards for determinations by the state fire marshal, as follows:

NFPA 10	1994 Edition	Standard for Portable Fire Extinguishers
NFPA 10R	1992 Edition	Recommended Practice for Portable Fire Extinguishing Equipment in Family Dwellings and Living Units
NFPA 11	1994 Edition	Standard for Low-Expansion Foam
NFPA 12	1993 Edition	Standard on Carbon Dioxide Extinguishing Systems
NFPA 12A	1992 Edition	Standard on Halon 1301 Fire Extinguishing Systems

NFPA 13	1996 Edition	Standard for the Installation of Sprinkler Systems
NFPA 13D	1996 Edition	Standard for the Installation of Sprinkler Systems in One and Two-Family Dwellings and Manufactured Homes
NFPA 13R	1996 Edition	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories
NFPA 14	1996 Edition	Standard for the Installation of Standpipe and Hose Systems
NFPA 15	1996 Edition	Standard for Water Spray Fixed Systems for Fire Protection
NFPA 16	1995 Edition	Standard for the Installation of Deluge Foam-Water Sprinkler Systems
NFPA 16A	1994 Edition	Standard for the Installation of Closed-Head Foam-Water Sprinkler Systems
NFPA 17	1994 Edition	Standard for Dry Chemical Extinguishing Systems
NFPA 17A	1994 Edition	Standard for Wet Chemical Extinguishing Systems
NFPA 18	1995 Edition	Standard on Wetting Agents
NFPA 20	1996 Edition	Standard for the Installation of Centrifugal Fire Pumps
NFPA 24	1995 Edition	Standard for the Installation of Private Fire Service Mains and Their Appurtenances
NFPA 25	1995 Edition	Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems
NFPA 30	1996 Edition	Flammable and Combustible Liquids Code
NFPA 30A	1996 Edition	Automotive and Marine Service Station Code
NFPA 30B	1994 Edition	Code for the Manufacture and Storage of Aerosol Products
NFPA 31	1994 Edition	Standard for the Installation of Oil-Burning Equipment
NFPA 32	1996 Edition	Standard for Dry-Cleaning Plants
NFPA 33	1995 Edition	Standard for Spray Application Using Flammable or Combustible Materials
NFPA 34	1995 Edition	Standard for Dipping and Coating Processed Using Flammable or Combustible Liquids
NFPA 37	1994 Edition	Standard for the Installation and Use of Stationary Combustion Engines And Gas Turbines
NFPA 40E	1993 Edition	Code for the Storage of Pyroxylin Plastic
NFPA 43B	1993 Edition	Code for the Storage of Organic Peroxide Formulations
NFPA 43D	1994 Edition	Code for the Storage of Pesticides
NFPA 45	1996 Edition	Standard on Fire Protection for Laboratories Using Chemicals
NFPA 49	1994 Edition	Hazardous Chemicals Data

NFPA 50	1996 Edition	Standard for Bulk Oxygen Systems at Consumer Sites
NFPA 50A	1994 Edition	Standard for Gaseous Hydrogen Systems at Consumer Sites
NFPA 50B	1994 Edition	Standard for Liquefied Hydrogen Systems at Consumer Sites
NFPA 51	1997 Edition	Standard for the Design and Installation of Oxygen-Fuel Gas Systems for Welding, Cutting, and Allied Processes
NFPA 52	1995 Edition	Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems
NFPA 53	1994 Edition	Guide on Fire Hazards in Oxygen-Enriched Atmospheres
NFPA 54	1996 Edition	National Fuel Gas Code ANSI Z223.1-1996
NFPA 55	1993 Edition	Standard for the Storage, Use, and Handling of Compressed and Liquefied Gases in Portable Cylinders
NFPA 57	1996 Edition	Standard for Liquefied Natural Gas (LNG) Vehicular Fuel Systems
NFPA 58	1995 Edition	Standard for the Storage and Handling of Liquefied Petroleum Gases
NFPA 59A	1996 Edition	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)
NFPA 61	1995 Edition	Standard for the Prevention of Fires and Dust Explosion in Agricultural and Food Products Facilities
NFPA 68	1994 Edition	Guide for Venting of Deflagrations
NFPA 69	1997 Edition	Standard on Explosion Prevention Systems
NFPA 70	1996 Edition	National Electrical Code
NFPA 72	1996 Edition	National Fire Alarm Code
NFPA 75	1995 Edition	Standard for the Protection of Electronic Computer/Data Processing Equipment
NFPA 80	1995 Edition	Standard for Fire Doors and Fire Windows
NFPA 82	1994 Edition	Standard on Incinerators and Waste and Linen Handling Systems and Equipment
NFPA 88A	1995 Edition	Standard for Parking Structures
NFPA 88B	1991 Edition	Standard for Repair Garages
NFPA 90A	1996 Edition	Standard for the Installation of Air Conditioning and Ventilating Systems
NFPA 90B	1996 Edition	Standard for the Installation of Warm Air Heating and Air Conditioning Systems
NFPA 92A	1996 Edition	Recommended Practice for Smoke-Control Systems
NFPA 92B	1995 Edition	Guide for Smoke Management Systems in Malls, Atria, and Large Areas

NFPA 96	1994 Edition	Standard for Ventilation Control and Fire Protection of Commercial Cooking Operation
NFPA 97	1996 Edition	Standard Glossary of Terms Relating to Chimneys, Vents, and Heat-Producing Appliances
NFPA 99	1996 Edition	Standard for Health Care Facilities
NFPA 99B	1996 Edition	Standard for Hypobaric Facilities
NFPA 101	1997 Edition	Code for Safety to Life from Fire in Buildings and Structures
NFPA 101A	1995 Edition	Guide on Alternative Approaches to Life Safety
NFPA 102	1995 Edition	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures
NFPA 105	1993 Edition	Recommended Practice for the Installation of Smoke-Control Door Assemblies
NFPA 110	1996 Edition	Standard for Emergency and Standby Power Systems
NFPA 111	1996 Edition	Standard on Stored Electrical Energy Emergency and Standby Power Systems
NFPA 150	1995 Edition	Standard on Fire Safety in Racetrack Stables
NFPA 170	1996 Edition	Standard for Fire Safety Symbols
NFPA 204M	1991 Edition	Guide for Smoke and Heat Venting
NFPA 211	1996 Edition	Standard for Chimneys, Fireplaces, Vents, and Solid Fuel-Burning Appliances
NFPA 220	1995 Edition	Standard on Types of Building Construction
NFPA 221	1994 Edition	Standard for Fire Walls and Fire Barrier Walls
NFPA 231	1995 Edition	Standard for General Storage
NFPA 231C	1995 Edition	Standard for Rack Storage of Materials
NFPA 231D	1994 Edition	Standard for Storage of Rubber Tires
NFPA 231E	1996 Edition	Recommended Practice for the Storage of Baled Cotton
NFPA 231F	1996 Edition	Standard for the Storage of Roll Paper
NFPA 232	1995 Edition	Standard for the Protection of Records
NFPA 303	1995 Edition	Fire Protection Standard for Marinas and Boatyards
NFPA 307	1995 Edition	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves
NFPA 407	1996 Edition	Standard for Aircraft Fuel Servicing
NFPA 409	1995 Edition	Standard on Aircraft Hangars
NFPA 415	1997 Edition	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways
NFPA 418	1995 Edition	Standard for Heliports
NFPA 430	1995 Edition	Code for the Storage of Liquid and Solid Oxidizers

NFPA 490	1993 Edition	Code for the Storage of Ammonium Nitrate
NFPA 491M	1991 Edition	Manual of Hazardous Chemical Reactions
NFPA 495	1996 Edition	Explosive Materials Code
NFPA 496	1993 Edition	Standard for Purged and Pressurized Enclosures for Electrical Equipment
NFPA 513	1994 Edition	Standard for Motor Freight Terminals
NFPA 701	1996 Edition	Standard Methods of Fire Tests for Flame-Resistant Textiles and Films
NFPA 703	1995 Edition	Standard for Fire Retardant Impregnated Wood and Fire Retardant Coating for Building Materials
NFPA 704	1996 Edition	Standard System for the Identification of the Hazards of Materials for Emergency Response
NFPA 705	1993 Edition	Recommended Practice for a Field Flame Test for Textiles and Films
NFPA 750	1996 Edition	Standard on Water Mist Fire Protection Systems
NFPA 801	1995 Edition	Standard for Facilities Handling Radioactive Materials
NFPA 901	1995 Edition	Standard Classifications for Incident Reporting and Fire Protection Data
NFPA 902	1997 Edition	Fire Reporting Field Incident Guide
NFPA 903	1996 Edition	Fire Reporting Property Survey Guide
NFPA 904	1996 Edition	Incident Follow-Up Report Guide
NFPA 906	1993 Edition	Guide for Fire Incident Field Notes
NFPA 1123	1995 Edition	Code for Fireworks Display
NFPA 1124	1995 Edition	Code for the Manufacture, Transportation, and Storage of Fireworks
NFPA 1126	1996 Edition	Standard for the Use of Pyrotechnics Before a Proximate Audience
NFPA 1221	1994 Edition	Standard for the Installation, Maintenance, and Use of Public Fire Service Communication Systems
NFPA 1402	1997 Edition	Guide to Building Fire Service Training Centers
NFPA 1403	1997 Edition	Standard on Live Fire Training Evolutions
NFPA 2001	1996 Edition	Standard on Clean Agent Fire Extinguishing Systems
NFPA 8501	1992 Edition	Standard for Single Burner Boiler Operation
NFPA 8502	1995 Edition	Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers
NFPA 8506	1995 Edition	Standard on Heat Recovery Steam Generator Systems

B. All inspections of buildings constructed or remodeled pursuant to plans submitted to the Office of State Fire Marshal after May 31, 1998, will be made utilizing new construction requirements set forth in the 1997 edition of the *Life Safety Code* of the National Fire Protection Association and Section

412—Special Provisions for High-Rise Buildings published in the 1994 edition of the *Standard Building Code* of the Southern Building Code Congress International, Inc.

C. All inspections of buildings constructed or remodeled pursuant to plans submitted to the Office of State Fire Marshal on or after January 5, 1995, will be made utilizing new construction requirements set forth in the 1994 edition of the *Life Safety Code* of the National Fire Protection Association and Section 506—Special Provisions for High-Rise Buildings published by the 1991 edition of the *Standard Building Code* of the Southern Building Code Congress International, Inc.

D. All inspections of buildings constructed or remodeled pursuant to plans submitted to the Office of State Fire Marshal after May 31, 1992, will be made utilizing new construction requirements set forth in the 1991 edition of the *Life Safety Code* of the National Fire Protection Association and Section 506—Special Provisions for High-Rise Buildings published by the 1988 edition of the *Standard Building Code* of the Southern Building Code Congress International, Inc.

E. With regard to buildings constructed or remodeled between February 19, 1989, and May 31, 1992, or whose construction was timely completed pursuant to plans submitted to the Office of State Fire Marshal prior to May 31, 1992, inspections will be made utilizing the new construction requirements set forth in the 1988 edition of the *Life Safety Code* of the National Fire Protection Association and Section 506—Special Provisions for High-Rise Buildings published by the *Standard Building Code* of the Southern Building Code Congress International, Inc. (1985 Edition).

F. All inspections of buildings constructed or remodeled between September 1, 1986, and February 19, 1989, will be made utilizing the requirements set forth in the 1985 edition of the *Life Safety Code* of the National Fire Protection Association and Section 518—Special Provisions for High Rise of Chapter 4 of the 1985 edition of the *Southern Building Code* Congress International, Inc.

G. All inspections of buildings constructed or remodeled between September 1, 1981, and September 1, 1986, will be made utilizing the requirements set forth in the 1981 edition of the *Life Safety Code* of the National Fire Protection Association and Section 506—Special Provisions for High-Rise Buildings published by the *Standard Building Code* (1979 edition) of the Southern Building Code Congress International, Inc.

H. All inspections of buildings constructed or remodeled between January 1, 1980, and September 1, 1981, will be made utilizing the requirements set forth in the 1976 edition of the *Life Safety Code* of the National Fire Protection Association and Section 518—Special Provision for High-Rise of Chapter 4 of the 1974 amendments to the 1973 *Standard Building Code*.

I. With regard to buildings constructed or remodeled between January 1, 1975 and January 1, 1980, inspections of those buildings will be made on the basis of requirements that the buildings meet the minimum requirements set forth in the 1973 edition of the *Life Safety Code* of the National Fire Protection Association and Section 518—Special Provision for High Rise of Chapter 4 of the 1974 amendments to the 1973 *Southern Standard Building Code*.

J. With regard to buildings constructed or remodeled prior to January 1, 1975, inspections by the Office of the State Fire Marshal shall be made utilizing the requirements set forth in the 1967 edition of the *Life Safety Code* of the National Fire Protection Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:145 (February 1975), amended LR 5:468 (December 1979), LR 6:71 (February 1980), amended by the Office of State Fire Marshal, LR 7:588 (November 1981), LR 9:417 (June 1983), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 15:96 (February 1989), LR 17:1114 (November 1991), LR 23:

§105. Required Inspections of Wiring, Gas Piping and Fire Extinguishers

A. In order to assure that the electrical wiring in any structure or movable will not cause a fire or explosion, the electrical wiring in any structure, watercraft or movable shall be inspected, and if necessary repaired, by a licensed electrical contractor in accordance with the *National Electrical Code*.

B. In order to assure that any structure, watercraft or movable is safe from hazards caused by gas piping, all gas piping shall be inspected, and if necessary repaired, by a licensed plumber or mechanical contractor in accordance with the applicable *National Fuel Gas Code* of the National Fire Protection Association and the provisions of the Louisiana Revised Statutes.

C. The inspections required by this regulation for electrical wiring and gas piping shall be made at the time of the initial installation and thereafter as required based upon a visual inspection by the fire marshal or his designated representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:145 (March 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§107. Smoke and Fire Detection Systems

Educational Occupancies

1. In those educational facilities for which plans were reviewed prior to January 1, 1982, and in which deficiencies have been noted because of inadequate corridor separation, lack of smoke barriers, and lack of sprinkler protection in windowless classroom buildings, the state fire marshal will accept as equivalent compliance to the aforementioned requirements installation of a complete smoke detection system in the corridors and hazardous areas. This system must be capable of/and properly connected to sound the general fire alarm and shut down all central air handling systems.

2. Within 45 days after service on the owner and/or operator of an inspection report and order of correction citing the deficiencies listed in, the owner and/or operator of the school must submit to the fire marshal a proposed plan of correction in accordance with §107.A.1. The accepted plan of correction then must be completed within the time specified by the fire marshal which shall not exceed 48 months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:236 (May 1982), amended LR 8:523 (October 1982), LR 8:625 (November 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

Chapter 3. Buildings

§301. Building Permits

A. In accordance with the requirements set forth in R.S. 40:1574 that plans and specifications for any and all buildings to be constructed in the state must first be submitted to the Office of State Fire Marshal for review before construction, renovation, remodeling, or repair, no governmental subdivision in the state of Louisiana shall issue any building permit until the plans and specifications, therefore, have been approved by the Office of State Fire Marshal.

B. Accordingly, with the application for a building permit from any governmental subdivision of this state, a copy of the approval of the plans and specifications for which the building permit is being requested shall be attached to the application. This ruling shall not apply to one and two family dwellings.

C. Plans and specifications submitted in violation of R.S. 37:155(4) will be rejected by the Office of State Fire Marshal and deemed to be NOT IN COMPLIANCE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:465 (November 1978), repromulgated LR 6:72 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 15:1135 (December 1989), LR 16:320 (April 1990), LR 23:

§303. Plans and Specifications for New Buildings

A. As of May 31, 1998, the plans and specifications for every structure built or remodeled in the state of Louisiana must be drawn in accordance with the requirements of the 1997 edition of the *Life and Safety Code* of the National Fire Protection Association and, for all high-rise buildings, Section 506—Special Provisions for High-Rise Buildings of the *Standard Building Code* (1994 edition) of Southern Standard Building Code Congress International, Inc.

B. NFPA 101 *Life Safety Code* requiring partitions for sleeping quarters shall not apply to any day care centers which operate only during daylight hours. Ratios of children to supervisors are set by the Division of Family Services and enforced by them.

C. All unsprinkled apartments, condominiums or townhouses within multiple dwellings shall be separated from one another by construction having a fire resistance rating of not less than one hour as required by the *Standard Building Code*.

D. Portable fire extinguishers shall be required in all occupancies. The location, maintenance, and installation shall be in accordance with NFPA Pamphlet Number 10.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:143 (February 1975), amended LR 5:468 (December 1979), LR 6:72 (February 1980), amended by the Office of the State Fire Marshal, LR 7:344 (July 1981), LR 7:588 (November 1981), LR 9:417 (June 1983), amended by the Department of Public Safety and Corrections, Office of the

State Fire Marshall, LR 12:116 (February 1986), LR 15:96 (February 1989), LR 17:1115 (November 1991), LR 23:

§305. Insulation

The state fire marshal will accept and permit the use of insulation as permitted by the 1994 edition of the *Standard Building Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:389 (October 1978), LR 6:72 (February 1980), LR 6:149 (April 1980), amended by the Office of the State Fire Marshal, LR 8:485 (September 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshall, LR 23:

§307. Observation of Construction; Final Inspection

A. For structures which by law may only be constructed with plans prepared and certified by a licensed architect or civil engineer, it shall be the duty of the owner of such a structure to provide for periodic observation of the construction of the structure to determine if the work is proceeding in accordance with the plans and specifications as approved by the fire marshal. The observations shall be performed by a registered architect or a registered civil engineer.

B. Upon completion of such work, where the law requires the owner to engage an architect or registered civil engineer, the owner shall furnish to the fire marshal a certificate signed by a registered architect or registered civil engineer stating that the periodic observations have been made and that to the best of the architect's or engineer's knowledge, information and belief, the work was completed in accordance with those fire safety standards and regulations stipulated in the plans and specifications previously approved by the fire marshal. When the owner has not engaged an architect or registered civil engineer, and the same is not required by law, the owner must submit the certificate of completion when appropriate, but always under his signature.

C. Occupancy of a structure, watercraft or movable prior to furnishing a certificate to the fire marshal as required under this regulation is expressly forbidden by the fire marshal, unless and until a satisfactory inspection has been made by the fire marshal or his certified representative.

D. In order to comply with the requirements of §307.B, the owner must submit to the fire marshal the following certificate completed by the architect, civil engineer, or if neither is required by law, the owner:

CERTIFICATE OF COMPLETION

Date:
TO: The Louisiana State Fire Marshal
5150 Florida Boulevard
Baton Rouge, Louisiana 70806

This is to certify that the _____
(name of project by title)
for _____ located at _____
(type of use) (street/number/name)

as periodically observed by me, by my consultants, and/or by others in my employ during construction and, to the best of my knowledge, information and belief, has been completed in accordance with the safety provisions which were shown in the plans and specifications previously approved by the fire marshal.

Under penalty of law for false statement,
I _____ License Number: _____
(name of architect/civil engineer
or owner if architect or engineer
is not required)

certify that all statements contained therein are, to the best of my knowledge, information and belief, true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651 B.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 3:498 (December 1977), repromulgated LR 6:73 (February 1980), amended by the Office of the State Fire Marshal, LR 8:523 (October 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshall, LR 23:

§309. Requirements for Connection of Electrical Power

A. The installation and/or use of temporary or permanent electrical power in new construction shall be prohibited until plans and specifications for every structure built in the state of Louisiana are reviewed by the Office of State Fire Marshal pursuant to R.S. 40:1574 and LAC 55:V.303.

B. Utility companies can comply with §309.A by providing the Office of the State Fire Marshal with a list of all new construction structures provided with temporary or permanent power within 30 days of electrical connection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 17:272 (March 1991), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshall, LR 23:

Chapter 5. Manufactured Housing

§501. Definitions

In the regulations which follow, unless contract otherwise requires:

Act—the National Manufactured Home Construction and Safety Standards Act of 1974, as amended, the Housing and Community Development Act of 1974 (42 U.S.C. 01 et seq.).

Add-On—any structure (except a structure designed or produced as an integral part of a manufactured home) which when attached to the basic home unit, increases the area, either living or storage, of the manufactured home.

Alteration—the replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a dealer or distributor but prior to sale by a dealer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat producing, or electrical system. It includes any modification made in the home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring connection to an electrical receptacle, where the replace item is of the same configuration and ratings as the one being replaced. It also does not include an addition of an appliance requiring plug-in to an electrical receptacle, which appliance was not provided with the home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

Certification Label—see *Label*.

Certification Report—the report prepared by the IPIA (see §501.A.Primary Inspection Agency.b) for each manufactured home manufacturing plant under 24 CFR

Section 3282-362(b)(2) in which the IPIA provides a complete description of the initial comprehensive inspection of the plant, an evaluation of the quality assurance program, under the approved quality assurance manual, and the identity of the DAPIA (See §501.A. *Primary Inspection Agency*.a) which approved the designs and quality assurance manual used in the plant. Where appropriate under 24 CFR Section 3282-362(b)(5), the certification report may be made by a DAPIA.

Component—any part, material or appliance which is built in as an integral part of the manufactured home during the manufacturing process.

Cost Information—information submitted by a manufacturer under Section 607 of the Act with respect to alleged cost increases resulting from action by the secretary, in such form as to permit the public and the secretary to make an informed judgment on the validity of the manufacturer's statements. Such terms include both the manufacturer's cost and the cost to retail purchasers.

Date of Manufacture—the date on which the label required by 24 CFR Section 3282-205(c) is affixed to the home.

Dealer—any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease home for purposes other than resale.

Defect—a failure to comply with an applicable federal manufactured housing safety and construction standard that renders the home or any part or component thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home. See related definitions of *Imminent Safety Hazard*, *Noncompliance*, and *Serious Defect*.

Design—drawings, specifications, sketches and the related engineering calculations, test and data in support of the configurations, structures and systems to be incorporated in homes manufactured in a plant.

Director—the director of the United States Office of Manufactured Housing and Construction Standards.

Distributor—any person engaged in the sale and distribution of manufactured housing for resale.

Failure to Conform—an imminent safety hazard related to the standards, a serious defect, or noncompliance and is used as a substitute for all of those terms.

HUD—the United States Department of Housing and Urban Development.

Imminent Safety Hazard—a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured housing construction or safety standard. See related definitions of *Defect*, *Noncompliance*, and *Serious Defect*.

Joint Monitoring Team—a monitoring inspection team composed of personnel provided by the various state administrative agencies, or its contract agent, operating under a contract with HUD for the purpose of monitoring or otherwise aiding in the enforcement of the federal standards.

Label or Certification Label—the approved form of certification by the manufacturer that, under 24 CFR Section

3282-362(c)(2)(i), is permanently affixed to each transportable section of each home manufactured for sale to a purchaser in the United States.

Manufactured Housing—a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation when connected to the required utilities, including the plumbing, heating, air-conditioning and electrical systems contained therein; except that the term shall include any structure which meets all the requirements of this Subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States Department of Housing and Urban Development and complies with the standard established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq.

Manufactured Housing Construction—all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety.

Manufactured Housing Safety—the performance of a manufactured home in such a manner that the public is protected against unreasonable risk of the occurrence of accidents due to the design or construction of such home, or any unreasonable risk of death or injury to the user or to the public if such accidents do occur.

Manufacturer—any person engaged in manufacturing or assembling manufactured housing, including any person engaged in importing homes for resale.

Noncompliance—a failure of a home to comply with a federal manufactured housing construction or safety standard that does not constitute a defect, serious defect, or imminent safety hazard. (See related definition of *Defect*, *Imminent Safety Hazard*, and *Serious Defect*.)

Owner—any person purchasing a home from any other person after the first purchase of the home, in good faith, for purposes other than resale.

Primary Inspection Agency (PIA)—a state/or private organization that has been accepted by the secretary in accordance with the requirements of Subpart H of the Manufactured Homes and Procedural Regulation. There are two types of PIA:

a. Design Approval PIA (DAPIA), which evaluates and approves or disapproves manufactured home designs and quality control procedures; and

b. Production Inspection PIA (IPIA), which evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and provides ongoing surveillance of the manufacturing process. Organizations may act as one or both of these types.

Purchaser—the first person purchasing a manufactured home in good faith for purposes other than resale.

Quality Assurance Manual—a manual, prepared by each manufacturer for its manufacturing plants and approved by a DAPIA which contains: a statement of the manufacturer's quality assurance program; a chart of the organization

showing, by position; all personnel accountable for quality assurance; a list of tests and test equipment required; a station-by-station description of the manufacturing process; a list of inspections required at each station; and a list by title of personnel in the manufacturer's organization to be held responsible for each inspection. Where necessary, the quality assurance manual used in a particular plant shall contain information specific to that plant.

Red Tag—to affix a notice to a home which has been found to contain an imminent safety hazard or a failure to conform with any applicable standard. A *red tag* is the notice so affixed to the manufactured home.

Secretary—the secretary of the United States Department of Housing and Urban Development.

Secretary's Agent—a party operating as an independent contractor under a contract with HUD.

Serious Defect—any failure to comply with an applicable federal manufactured housing construction and safety standard that renders the home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected home.

Standards—the federal manufactured housing construction and safety standards promulgated under Section 604 of the Act, 42 U.S.C. 5403, as Part 280 of these regulations.

State—includes each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

State Administrative Agency—an agency of a state which has been approved or conditionally approved to carry out the state plan for enforcement of the standards pursuant to Section 623 of the act, 42 U.S.C. 5422, and Subpart G of the Federal Manufactured Homes Procedural and Enforcement Regulations.

State Plan Application—the application of a state organization which is submitted to the secretary for approval as a state administrative agency under Subpart G of the Federal Manufactured Homes Procedural and Enforcement Regulation.

System—a set or arrangement of materials or components related or connected as to form an operating entity, e.g., heating, ventilating and air-conditioning systems, and evaporative coolers.

Title I—Title I of the National Housing Act, 12 U.S.C. 1701, which authorizes HUD to insure loans made for the purchase of manufactured homes that are certified as meeting HUD requirements for dwelling quality and safety.

United States District Courts—the federal district courts of the United States and the United States courts of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, and American Samoa.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:16 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§505. Inspections

The Uniform Standards Code for Mobile Homes, R.S. 51:911.32, allows employees and personnel under contract to the state fire marshal to enter, at a reasonable time, any factory, warehouse or establishment, in which manufactured houses are manufactured, stored or held for sale, for the purpose of ascertaining whether housing construction and safety standards have been and are being met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:16 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§507. Handling of Consumer Complaints

All complaints concerning units constructed in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974 shall be handled in compliance with Subpart I of the regulations established pursuant to the Act.

1. Upon receipt of a consumer complaint or other information indicating the possible existence of a failure to conform or imminent safety hazard, the state fire marshal will review the complaint or information to determine where the home was manufactured and if a problem exists. All complaints shall be referred to the manufacturer or dealer if a problem is indicated. When there is information to indicate that homes with the same failure to conform, or imminent safety hazard, may have been manufactured in more than one state, the complaint will simultaneously be forwarded to HUD and the home manufacturer.

2. Where the complaint is forwarded to the manufacturer, the manufacturer will be requested, in writing, to investigate the complaint within 20 days of receipt of the complaint and make a report to the state fire marshal. In the event that it appears from the complaint that an imminent safety hazard exists, the state fire marshal will simultaneously contact the manufacturer by telephone and make its own investigation in addition to forwarding the complaint in writing, in an effort to expedite investigation and any necessary correction by the manufacturer.

3. Where the manufacturer has determined and reports that no imminent safety hazard, serious defect, defect, or noncompliance exists and the state fire marshal is able to concur from all available information, we will consider the complaint closed and so inform the manufacturer and complainants; however, if the state fire marshal is unable to concur with the manufacturer's report, it will make an investigation and within 10 days of receipt of the manufacturer's report shall inform the manufacturer of the results of the investigation. If it is found that the manufacturer's report was correct, the state fire marshal will consider the matter closed.

4. Where upon investigation, the state fire marshal determines, however, that an imminent safety hazard, serious defect, defect or noncompliance may exist, he or his designated representative will notify the manufacturer to take

necessary action. Where the manufacturer does not take action after notification by the state fire marshal and it appears that an imminent safety hazard or serious defect may exist, the state fire marshal will inform the manufacturer of its opinion and simultaneously forward to HUD documentation of the factual basis upon which such opinion was made, for administrative determination by HUD, pursuant to 24 CFR Section 3282.407(a). Where the manufacturer does not take action after notification by the state fire marshal, and it appears that a defect or noncompliance may exist, the manufacturer will be notified. The notice shall be sent to the manufacturer by certified mail and will include:

- a. the preliminary determination by the state fire marshal;
- b. the factual basis for the determination;
- c. the date on which the determination was made;
- d. the identifying criteria of the manufactured homes known to be affected;
- e. notice to the manufacturer that a hearing or presentation of views may be requested pursuant to 24 CFR Part 3282, Subpart D, to establish that there is no such defect or noncompliance;
- f. notice to the manufacturer that the preliminary determination of defect or noncompliance shall become final unless the manufacturer responds within 15 days after receipt of such notice and requests a hearing or presentation of views to rebut the state fire marshal's determination;
- g. notice to the manufacturer that any information upon which the determination has been based, such as test results, records of inspection, etc., shall be available for inspection by the manufacturer.

5. Where the manufacturer requests a hearing or presentation of views one shall be promptly provided in accordance with the procedures outlined in the Administrative Procedure Act, R.S. 49:950 et seq.

6. Where the manufacturer fails to respond to the notice of preliminary determination or if the state fire marshal's board of review decides that the views and evidence presented by the manufacturer is insufficient to rebut the preliminary determination, the state fire marshal may make a final determination that a defect or noncompliance exists and will notify the manufacturer to make a notification and submit a plan in accordance with 24 CFR Section 3282.409. Within 10 days after receipt of the notice of final determination, the manufacturer may appeal to the secretary of the United States Department of Housing and Urban Development.

7. The manufacturer's plan for notification and correction, including contents of notice, time for implementation and completion of acts and reports, shall be made in accordance with the provisions of 24 CFR Section 3282.409 through 3282.413. When the manufactured home is in the hands of a distributor or dealers, it shall be handled in accordance with 24 CFR Section 3282.414.

8. The state fire marshal shall be responsible through oversight and remedial actions that the provisions of 24 CFR Part 3282, Subpart I, are carried out and may make inspections of any manufacturer corrections to assure compliance with 24 CFR Part 3282, Subpart I.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:17 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§509. Notification and Correction Procedure

A. Manufacturer's Determination

When a consumer complaint is referred to the manufacturer and the manufacturer determines that an imminent safety hazard, serious defect, defect or noncompliance may exist and the manufacturer does not correct the imminent safety hazard or failure to conform within 30 days of the date on which the manufacturer determined the existence of an imminent safety hazard or failure to conform, the manufacturer shall prepare and submit a plan as provided for in 24 CFR Section 3282.409, to the state fire marshal.

B. Notification

The plan, including a copy of the notice as required by 24 CFR Section 3282.410, shall be submitted to the state fire marshal by the manufacturer and shall provide for notification by mail, to the first purchaser (not including any dealer or distributor of the affected manufacturer) of each manufactured home containing an imminent safety hazard, serious defect, defect or noncompliance and any subsequent purchaser to whom any warranty provided by the manufacturer or required by federal or state law has been transferred, to the extent feasible; by mail to any other person who is a registered owner of each manufactured home containing an imminent safety hazard, serious defect, defect or noncompliance and whose name has been returned to the manufacturer under the procedure of Record of Purchasers as provided for under 24 CFR Section 3282.410; by mail or other expeditious means to the dealers or distributors to whom such manufactured home was delivered. In the event the manufactured home has an imminent safety hazard or serious defect, the notification shall be forwarded by certified mail, if mailed.

C. Review

1. The state fire marshal will review the plan submitted by the manufacturer, including the contents of the notice, and either approve the plan as submitted or make modifications to the plan for compliance with the requirements of 24 CFR Section 3282.409 and notify the manufacturer of the approval or modification. The manufacturer may contest the modification within five days of the approval of the plan or modification.

2. If the state fire marshal does not accept the manufacturer's position as to the modification, it shall act as follows:

if the manufacturer contends that the manufactured home contains a defect rather than an imminent safety hazard or serious defect as the state fire marshal contends, the state fire marshal shall refer the matter to the secretary for determination under 24 CFR 3282.407(a);

3. the formal notification requirements which would result from any determination by the manufacturer under 24 CFR Section 3282.404 may be waived by the state fire marshal that would otherwise approve the plan upon receipt of satisfactory assurances from the manufacturer that:

a. the manufacturer has identified all possibly affected manufactured homes which have been sold to purchasers, dealers and distributors;

b. the manufacturer has corrected, at the manufacturer's expense, all affected manufactured homes; and

c. the repairs, in the state fire marshal's judgment, are adequate to remove the imminent safety hazard or failure to conform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:18 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§511. Oversight

Oversight by the state fire marshal pursuant to 24 CFR Section 3282.405 and 3282.407, the state fire marshal will:

1. review plans submitted by manufacturers;
2. modify plans submitted by manufacturers where necessary for compliance with 24 CFR Section 3282.409;
3. notify the manufacturer of any modifications or necessary corrections;
4. approve plans submitted by manufacturers that comply with the requirements of 24 CFR Section 3282.409;
5. refer to the secretary of HUD any matter where:
 - a. the manufacturer contends that the manufactured home contains a defect rather than an imminent safety hazard or serious defect as determined by the state fire marshal;
 - b. the manufacturer contends the number of manufactured homes affected is different from that determined by the state fire marshal;
 - c. the manufacturer contends the contents of the notice or the correction are different from what the state fire marshal has determined;
 - d. the manufacturer and the state fire marshal agree that an imminent safety hazard or serious defect exists;
6. determine from records or otherwise that the time elements for implementation of the manufacturer's plan, as outlined in 24 CFR Section 3282.412, are carried out;
7. determine from records or otherwise that required correction of defects have been made by the manufacturer;
8. determine from records or otherwise that the manufacturer has complied with the requirements outlined in 24 CFR Section 3282.404(e) where the state fire marshal has waived the formal notification requirements that would result from any determination by a manufacturer to provide notification as outlined in 24 CFR Section 3282.404;
9. review reports submitted to it by manufacturers, DAPIA and IPIA to determine that the requirements outlined in 24 CFR Part 3382, Subpart I, are being complied with; and
10. review manufacturer records for incorrect determination, inadequate repairs or failure to make required repairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:19 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§513. Amendments

In amending these regulations, the state fire marshal shall follow the procedure specified in R.S. 49:950 et seq., the Administrative Procedure Act, and any amendments thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:19 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§515. Appeals

Notwithstanding the provisions of 24 CFR Section 3282.152(f)(2) and (g)(2) relating to the conclusive effect of a final determination, any party, in a proceeding held at a SAA under this Chapter, including specifically the owners of affected manufactured homes, consumer groups representing affected owners and manufacturers (but limited to parties with similar substantial interest), may appeal to the SAA which is adverse to the interest of that party. This appeal on the record shall be made within 30 days of the date on which the final determination was made by the SAA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:19 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§517. IPIA Fees

A. IPIA (In Plant Inspection Agency) fees for the inspection of the construction of manufactured housing within this state shall be as follows:

1. \$20 for each manufactured home constructed within Louisiana;
2. \$23 per hour for each hour that a field inspector monitors the manufactured housing construction within the Louisiana manufacturing facility;
3. \$30 per hour for each hour the administrative personnel (architect and/or engineer) monitors the manufactured home construction within the Louisiana manufacturing facility.

B. The fees required shall be paid to the Office of State Fire Marshal, made payable to the Department of Public Safety, State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:19 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

Chapter 11. Modular Structures

§1101. Modular Structures Definition

A modular structure is any type of watercraft, movable or structure erected in the state of Louisiana which does not come within the definition of a mobile home as set forth in the Mobile Home Act, Act 281 of 1974, R.S. 51:911.21 et seq., but which contains hidden appliances, such as wiring, which are manufactured into the product at a factory rather than on-site and which are, therefore, impractical or impossible to inspect on-site when erected or constructed in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:363 (November 1979), repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1103. Applicability of the Fire Marshal's Act

All of the provisions of the Louisiana State Fire Marshal's Act, R.S. 40:1561 et seq., shall apply to modular structures. Accordingly, it shall be required that plans and specifications be submitted to the fire marshal's office for each and every modular structure prior to its erection or construction in the state of Louisiana. Failure to submit plans and specifications to the Office of State Fire Marshal shall, upon detection, result in immediate closure and a cease and desist order from the use of said structure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:363 (November 1979), repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1105. Certificate of Manufacturer

Prior to erection or construction in the state of Louisiana of a modular structure containing hidden appliances, such as wiring, gas piping, or other items which are not available to visual inspection by a Louisiana state fire marshal deputy, the owner of such structure shall furnish certification to the fire marshal that it was manufactured in accordance with those fire safety standards and regulations stipulated in the plans and specifications previously approved by the fire marshal. The certification must be made by an architect or engineer who observed the manufacture of the structure and who is registered in the state where such manufacture occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:363 (November 1979), repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1107. Supersedes Local Authority

This rule shall supersede the authority of local governmental subdivisions to require that the modular structures which are shipped into this state be torn down or disfigured in any fashion in order to make an on-site inspection of hidden appliances. Hereafter, any modular structures which are shipped into this state after having had the plans and specifications reviewed by the Office of State Fire Marshal and which have been given a certificate of manufacture by a licensed architect or engineer that the hidden appliances meet the requirements of Louisiana state law must be reviewed and must be permitted to be constructed and installed in the state without the need of tearing into or otherwise abridging the structure for the purpose of an on-site inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 5:363 (November 1979),

repromulgated LR 6:76 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

Chapter 13. Health Care Facilities; Hospitals

§1301. Emergency Generators for Health Care Facilities

In addition to the requirements of the *Life Safety Code* as set forth in previous regulations, all hospitals, skilled nursing facilities or any other facility utilizing life support systems on a 24-hour day basis shall comply with the following:

1. emergency power must be provided in conformity with NFPA Code 99;

2. if the source of fuel for the motor generator is gasoline, diesel, kerosene or other fuels that are supplied independent of the public utilities, a secondary source of fuel will not be necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 8:15 (January 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 15:95 (February 1989), LR 23:

§1303. Hospital Fire Lanes

A. There shall be no parking or stopping of any kind in fire lanes designated by the state fire marshal or his deputy in and around hospitals, nursing homes, convalescence facilities and any other building used for the same or similar purposes.

B. After the fire marshal has designated the fire lanes, it shall be the responsibility of the above described institution to pay for and to erect suitable signs notifying everyone that there shall be no parking in the designated fire lanes by order of the state fire marshal; failure to obey this order shall subject the violator to a fine of \$1,000, or one year in jail, or both.

C. The fire marshal, his certified local authorities, or local law enforcement officials shall remove any vehicle parked in any fire lane in the state of Louisiana by any means necessary and shall assess the cost of removal against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by the owner.

D. Owners and occupants of the property on which fire lanes are located are hereby charged with the responsibility of notifying the fire marshal, his certified local authorities, or local law enforcement officials of the existence of any vehicles parked in those fire lanes; and in the event that they are unable to contact the fire marshal, his certified local authorities, or local law officials, the owner and occupant are hereby charged with the responsibility of and are hereby authorized to remove any vehicle parked in those fire lanes by any means necessary and to assess the cost of same against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by the owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:144 (February 1975), repromulgated LR 6:73 (February 1980), amended LR 6:659 (November 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

Chapter 15. Public and Governmental Facilities

§1501. Equal Access For Disabled Individuals

A. Buildings, structures, public facilities, governmental facilities and improved areas built between January 1, 1978 and August 14, 1995, shall be covered by the standards put forward in ANSI 117.1. Such entities built on or after August 14, 1995, shall be covered by the ADAAG guidelines to the Americans With Disabilities Act in effect on September 1, 1994 (CFRS 40:1732-1744).

B. Multi-family dwelling units of less than four stories with less than 49 units accessible at habitable grade levels are not required to comply with these regulations above such levels, except when an elevator is provided.

C. Multi-family dwelling units of 15 or more dwelling units must have at least 5 percent or one dwelling unit which meets these regulations. Such facilities with less than 15 dwelling units are not required to meet these regulations except that all exits and passageways to exits must be at least 32 inches in width.

D. Multi-family dwelling units shall comply with the requirements for dwelling units set forth in ANSI A117.1-1994 of the American National Standards Institute entitled *American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People* which can be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:465 (November 1978), repromulgated LR 6:74 (February 1980), amended by the Office of the State Fire Marshal, LR 7:588 (November 1981), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1503. Smoking in Places of Public Assembly Prohibited

A. There shall be no smoking in the public assembly areas of any churches, schools and theaters; this shall not prohibit the owners and/or operators of these particular places of public assembly from creating and designating smoking areas which are constructed and maintained to safeguard the life and safety of the individuals utilizing the facilities in question.

B. There shall be no smoking where flammable materials and substances are being stored, manufactured, handled or dispensed.

C. There shall be no smoking in any areas which have been designated by the state fire marshal as hazardous and for which reasons he has posted or caused to be posted a sign specifically indicating that there shall be no smoking in that particular area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651 B.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 6:74 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1505. Overcrowding

A. There shall be no overcrowding in any auditorium or place of public assembly. In the future (after January 1, 1975), no contracts with the owners of auditoriums or places of

public assembly shall allow the sale of tickets for the entry of any more individuals than can be seated in that auditorium or place of public assembly. All contracts for the use of said auditorium or place of public assembly shall provide that the owners of the auditorium or place of public assembly shall provide the tickets for the event for which the promoter of the event may be required to pay the cost.

B. There shall be no more individuals permitted in said auditorium or place of public assembly than can be accommodated by the number of seats and the arrangement of said seats as approved by the fire marshal or a certified local authority. Seating shall be in accordance with NFPA 101:31-2.4.1 (1994 edition).

C. The promoters of any event in said auditorium or place of public assembly shall be required to pay the cost of additional security to assure that no more individuals enter said auditorium or place of public assembly than can be accommodated by the seating arrangement; and furthermore, the promoters shall provide their owners, the municipalities and the state with adequate insurance to cover the damage, property or personal injuries, which can foreseeably be expected to occur as a result of the circumstances of this congregation of people.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:145 (February 1975), repromulgated LR 6:74 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1507. Storage of Flammables in Places of Public Assembly

A. In pursuit of the requirements of R.S. 40:1575, it is hereby ordered that the storage of all flammable materials in all state buildings and all places of public assembly shall be made in fireproof containers, that all state buildings and places of public assembly shall be regularly policed to clean up and place in fireproof containers all flammable materials, and all places of storage shall be arranged and maintained in such a manner that exit from said places and access to said places for the purposes of firefighting is not in any way impeded.

B. Flammable materials includes, but is not limited to, paper, cigarettes, food wrappings, cardboard container for paper, and office supplies. Flammable materials for the purpose of this regulation would not include furniture, clerical implements, and machinery while said articles are in use, unless said articles are located so as to be in a position of storage as opposed to active use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:388 (October 1978), repromulgated LR 6:75 (February 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1509. Shopping Centers Fire Lanes

A. Fire lanes shall be provided for all buildings that are set back more than 150 feet (45.75 meters) from a public road or exceed 30 feet (9.14 meters) in height and are set back over 50

feet (15.25 meters) from a public road in accordance with NFPA 1:3-5 (1992 edition).

B. It shall be the responsibility of the owners and operators of shopping centers and similar facilities to pay for and erect suitable signs notifying everyone that there shall be no parking within the specified area by order of the state fire marshal.

C. The fire marshal, his certified local authorities, or local law enforcement officials shall remove any vehicle parked in any fire lane in the state of Louisiana by any means necessary and shall assess the cost of removal against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by the owner.

D. Owners and occupants of the property on which fire lanes are located are hereby charged with the responsibility of notifying the fire marshal, his certified local authorities, or local law enforcement officials of the existence of any vehicles parked in those fire lanes; and in the event that they are unable to contact the fire marshal, his certified local authorities, or local law officials, the owner and occupant are hereby charged with the responsibility of and are hereby authorized to remove any vehicle parked in those fire lanes by any means necessary and to assess the cost of same against the owner of said vehicle by storing said vehicle and refusing to release said vehicle until all costs incident to the removal and storage of said vehicle have been paid by owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 1:144 (February 1975), repromulgated 6:73 (February 1980), amended LR 6:659 (November 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

Chapter 17. Prisons

§1701. Inspection of Prisons

All prisons in the state of Louisiana shall be inspected by the Office of State Fire Marshal at least semiannually. When violations of the State Fire Marshal's Act are discovered, the appropriate authority responsible for the maintenance of the prison in question shall be given 30 days for complying with the order of the fire marshal to remedy the violations in question. After 30 days have elapsed from the initial inspection, the prison in question shall be reinspected. If upon reinspection the deputy state fire marshal is satisfied that the responsible authority is making an effort to comply with the original order of correction, an additional 30 days may be granted said authority for complete compliance. After 60 days have elapsed from the initial inspection, if compliance with the original order of correction has not been met, the matter will be turned over to the legal department of the Office of State Fire Marshal which shall be instructed to immediately file suit for mandatory injunction in the appropriate district court to obtain immediate compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:388 (October 1978), repromulgated LR 6:75 (February 1980), amended by the Office of the State Fire Marshal, LR 7:12 (January 1981), LR 8:485

(September 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

Chapter 19. Fireworks

§1901. Fireworks/Public Display

Pursuant to R.S. 51:655, any person, firm or corporation or other legal entity desiring a permit for a public display may either apply to the Office of State Fire Marshal, 5150 Florida Boulevard, Baton Rouge, Louisiana 70806 or to any certified local authority, which application shall contain the following information in the form of an affidavit sworn and subscribed by a duly licensed and qualified notary public:

1. the date, time and place of the public display including the length of time;

2. all fire prevention plans and provisions which will be present and in force and available to assure the public safety at the public display;

3. a copy of the license by the Office of State Fire Marshal licensing the manufacturer, importer, distributor or jobber who will be supplying and/or conducting the public display or sufficient detail on the individual firm, corporation or other legal entity who will be supplying and/or conducting the public display to assure the state fire marshal or his certified local authority that the fireworks and the actual presentation and conduct of the public display will not endanger the public safety; such facts required in lieu of a license include business history including length of time in business, representative clients, references from public officials in fire safety, educational background of employees, and any and all other types of information which would assure the fire marshal or his certified authority that the public display will not endanger the public safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:388 (October 1978), repromulgated LR 6:75 (February 1980), amended by the Office of the State Fire Marshal, LR 7:12 (January 1981), LR 8:485 (September 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 23:

§1903. Licenses

Anyone applying for licenses under R.S. 51:656 shall set forth not only such information as may be required by the application attached hereto and made part hereof but all such information as shall be necessary for the fire marshal to determine that the manufacturing, importation, distribution and sale of the fireworks in question will not endanger the public safety; such facts shall include but are not limited to business history including length of time in business, proof of taxes paid, representative clients, references from public officials in fire safety, educational background of employees, and any and all other types of information which would assure the fire marshal or his certified authority that the public display will not endanger the public safety. All of the information both on the form and any additional information must be sworn and subscribed before a duly licensed and qualified notary public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 7:642 (December 1981),

amended by the Department of Public Safety and Corrections, Office of the State Fire Marshall, LR 23:

Chapter 21. Flammable and Combustible Liquids
§2101. Unattended Flammable Liquid Dispensing Systems

Unattended flammable liquid dispensing systems shall comply with the requirements of NFPA 30 and 30A, published by the National Fire Protection Association.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 3:498 (December 1977), repromulgated LR 6:75 (February 1980), amended by the Office of the State Fire Marshal, LR 8:523 (October 1982), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshall, LR 23:

§2103. Specification for Flammable and Combustible Liquid Containers

A. All flammable liquid (Class I) containers shall meet the requirements of NFPA 30 and/or 30A except as otherwise provided herein.

B. Non-reusable polyethylene containers made of DOT Type III plastic, treated if necessary to prevent permeation, having a minimum overall thickness of 0.010 inches, a rated capacity not over 2.5 gallons, a 15 percent maximum outage over mark capacity meeting the closure and testing requirements of, and containing combustible products authorized by DOT Specification 2U, shall be acceptable for Class II and Class III fuels.

C. All containers must be labeled to verify ANSI-ASTM D 3435-78 for Class I liquids and DOT Specification 2U for Class II and Class III liquids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of the State Fire Marshal, LR 9:691 (October 1983), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshall, LR 23:

Chapter 23. Boards Within the Office of the State Fire Marshal

§2301. Fire Marshal Board of Review

A. Any application to the board of review shall contain the following basic information set off in organized fashion with captions indicating that the paragraph in question contains the following basic information:

1. the name of the applicant;
2. a brief description of the facts;
3. a copy of the order of the fire marshal which is being appealed;
4. a reference to the section of the law or code being reviewed;
5. a brief description of why the applicant feels the requirements of the fire marshal are not within the fire marshal's authority, or brief description of why the interpretation of the fire marshal is incorrect, or what specific relief is required by the applicant;
6. a list of the individuals who will be appearing before the board and a brief description of the testimony or information they will be providing to the board;

7. a list of all documents which will be introduced or provided to the board along with a brief description of the documents, and if possible, a copy of said documents;

8. a list of each exhibit except for documents, and a brief description of the exhibit;

9. written proof of authority signed by the owner if the applicant is not the owner.

B. Whenever possible, a copy of the meeting notice including the date, time and place, and agenda of the meeting of the board will be published in the official notices of the official state journal; furthermore, whenever possible, a press release containing the same information will be mailed to the official journals of the cities of Shreveport, Monroe, Lafayette, Lake Charles, Alexandria, New Orleans, and Baton Rouge and any city or town in which the meeting of the board is to be held if it is not one of the aforementioned major cities; and the same information shall be mailed to each individual who has notified the fire marshal of his desire to receive a notice of such appeal.

C. A copy of the determination of the board as prepared by the chairman will be mailed to each individual who requests a copy of that specific determination as well as to the applicant.

D. The time delays for filing an appeal shall be those specified in R.S. 40:1577 and 40:1578.1(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1651(B).

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of Fire Protection, LR 4:257 (July 1978), amended LR 6:517 (August 1980), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshall, LR 23:

Interested persons may submit written comments on these proposed rules to Jerry Jones at 5150 Florida Boulevard., Baton Rouge, LA 70806. Comments will be accepted through the close of business on October 24, 1997.

Thomas H. Normile
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Comprehensive Rule Revisions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no anticipated implementation costs or savings.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated impact 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 is no anticipated impact on affected persons in terms of direct or indirect costs.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule changes are intended to clean up/clear up conflicting requirements or remove from state rule areas addressed in the adopted National Fire Codes enforced by the Fire Marshal's Office. This should make competition easier in the private sector. By using the national codes rather than

writing our own requirements, business and industry will not be surprised by some obscure requirement hidden in an administrative rule. Utilizing the national codes business and industry are already familiar with makes conducting business easier while at the same time allowing the fire marshal to fulfill his mandate to protect life and property from the hazards of fire.

Thomas H. Normile
Undersecretary
9709#053

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of State Police

Out-of-State Inspection Stations (LAC 55.III.808)

The Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section hereby gives notice in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., of its intent to adopt rules implementing the 1997 Regular Session amendments to R.S. 32:1301 and R.S. 32:1305, authorizing the establishment of motor vehicle inspection stations by any business owning more than 40 motor vehicles registered pursuant to the International Registration Plan in Louisiana and operating at least one vehicle repair and maintenance shop. The 1997 amendment authorizes the establishment of such inspection stations within or without the state of Louisiana.

The full text of this proposed rule may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Persons having comments or inquiries may contact Stephen A. Quidd, Attorney for the Office of State Police, by writing to Box 66614, Baton Rouge, LA 70896, by calling (504) 925-4068, or by sending a FAX to (504) 925-3974. These comments and inquiries should be received by October 24, 1997.

A public hearing on these proposed rules is currently scheduled for Monday, October 27, 1997, at 9 a.m. in the Second Floor Conference Room at the Office of State Police Headquarters at 265 South Foster Drive, Baton Rouge, LA 70806. Any person wishing to attend the public hearing should call to confirm the time and the location of the hearing.

Thomas H. Normile
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Out-of-State Inspection Stations

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The only cost that will be incurred is the cost incurred in having the proposed rule promulgated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue. The vehicles located at the out-of-state terminals are now required to be brought to

Louisiana and inspected. If these proposed rules are promulgated, vehicle registration license taxes and inspection fees could be lost if the operator chooses to register the commercial motor vehicles in another state and not in Louisiana.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The economic benefit to these operators will be that they will not be required to have all of their out-of-state commercial vehicles return to Louisiana for their annual commercial inspection.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule should have no effect on competition as all commercial fleet operators with a fleet of more than 50 vehicles will be able to establish out-of-state inspection stations.

Thomas H. Normile
Undersecretary
9709#073

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Sales Tax Division

Sales Tax on Lease or Rental Payments (LAC 61:I.4303)

Under the authority of R.S. 47:302(B) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Sales Tax Division proposes to amend LAC 61:I.4303.B, pertaining to the sales tax on rental or lease payments, to clarify the tax due when property is leased within Louisiana for use both within and without the state.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax §4303. Imposition of Tax

* * *

B. Tax on Lease or Rentals

1. General Rule

a. Revised Statute 47:302(B) provides that the Louisiana lease tax shall be paid on leases "within this state" and R.S. 47:301(7) defines *lease* or *rental* as "the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter, for consideration, without transfer of the title of such property." Therefore, the Louisiana lease tax is due when a lessee possesses or uses leased tangible personal property within Louisiana, regardless of where the lessor and lessee entered into the lease contract or where the lessor transferred possession of the leased property to the lessee.

b. *Lease* also means *rental* for the purposes of this Subsection.

c. Lease payments on leases within Louisiana are subject to the tax rate provided in Title 47 of the Revised Statutes. The tax rate must be applied to each payment, whether made monthly or according to some other schedule.

d. A lessor of leased property, as a *dealer* and agent for the Department of Revenue (department), shall collect the lease tax from the lessee of the leased property. The lessor must report lease payments on a cash-receipt basis, as provided in R.S. 47:306(A)(2).

e. Gross proceeds derived from the lease of tangible personal property within Louisiana are subject to the lease tax whether the leasing of tangible personal property is the established business of the taxpayer or is only incidental to the taxpayer's established business. Operating expenses and maintenance costs for keeping leased property in repair cannot be deducted from gross proceeds in arriving at the taxable base.

2. Exceptions to the General Rule

a. Revised Statute 47:305(E)(1) provides that:

"nor is it the intention of this Chapter [Chapter 2 of Title 47 of the Revised Statutes] to levy a tax on bona fide interstate commerce."

The lease tax imposed under R.S. 47:302(B) is a tax levied under Chapter 2 of Title 47 of the Revised Statutes. Therefore, the lease tax is not due on the lease of tangible personal property for those periods of time that it is used in bona fide interstate commerce, whether the use in bona fide interstate commerce is in Louisiana or outside of Louisiana.

b. If the lessee used the leased tangible personal property both in bona fide interstate commerce (whether within or without Louisiana) and in intrastate commerce in Louisiana, the lease tax is due only on the portion of the lease payments attributable to operational usage in Louisiana in intrastate commerce. What constitutes *operational usage* shall be based on industry custom and the type of property at issue (e.g., flight time, vehicle miles). If average operational usage in Louisiana intrastate commerce is equal to or less than 10 percent of total operational usage during a lease payment billing period, the leased property shall be deemed to be used exclusively in interstate commerce, and no lease tax shall be due for that period. Average operational usage in Louisiana intrastate commerce shall be determined by a ratio, the numerator of which is total Louisiana intrastate operational use, and the denominator of which is total operational use (both intrastate and interstate). If average operational usage in bona fide interstate commerce (whether within or without Louisiana) is equal to or less than 10 percent of total operational usage during a lease payment billing period, the leased property shall be deemed to be used in Louisiana intrastate commerce, and lease tax shall be due on the entire lease payment for that period. Average operational usage in bona fide interstate commerce shall be determined by a ratio, the numerator of which is total bona fide interstate operational use, and the denominator of which is total operational use (both intrastate and interstate). Nothing in this Subparagraph shall be construed to prohibit the department from imposing

a lease tax on leased property stored in Louisiana for use in intrastate commerce in Louisiana.

c. The lease tax is not due if the leased property is leased for use and actually used in an offshore area beyond the territorial limit of Louisiana. In order for this exclusion to apply, the leased property may not be used within Louisiana and the lessee must complete an LGST-9B sales tax exemption certificate stating that the leased property will be used in a specific offshore area. The definition of *use*, for the purposes of Paragraph 2, is found in R.S. 47:301(4)(d)(ii).

d. The department shall authorize lessees, who are registered with the department on a form to be provided by the department, and who used leased property in whole or in part outside Louisiana and/or in whole or in part in bona fide interstate commerce (whether within or without Louisiana), to issue exemption certificates to the lessors of the leased property for such use. A lessor receiving such an exemption certificate shall not be required to collect the lease tax for such leases, and lessees issuing such exemption certificates shall be responsible for reporting lease payments and paying the lease tax to the department for leases in accordance with the provisions of this regulation.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:302.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 13:107 (February 1987), amended LR 19:1033 (August 1993), amended by the Department of Revenue, Sales Tax Division, LR 23:

Interested persons are invited to submit written comments on these proposed amendments. Comments should be submitted no later than Monday, October 27, 1997, at 4:30 p.m., to Raymond Tangney, Director of the Sales Tax Division, Box 201, Baton Rouge, LA, 70821-0201 or by FAX (504) 925-3860.

Interested persons are also invited to attend the public hearing on these proposed amendments, which will be held on Tuesday, October 28, 1997, at 1 p.m., in the secretary's conference room, 330 North Ardenwood Drive, Baton Rouge, LA.

John Neely Kennedy
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Sales Tax on Lease or Rental Payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this amendment will result in additional administrative costs for the department based on additional sales taxpayer registrations and filings, account coding and maintenance, and exemption certificate development and issuance. The additional cost amount cannot be determined because we do not know the number of taxpayers that will qualify for the options allowed by this amendment. Local governmental taxing authorities may also incur additional costs if they choose to adopt this amendment.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed amendment will result in an indeterminable revenue loss. Under the current rule, tax is due on tangible

personal property leased or rented in Louisiana that is used both in interstate and intrastate commerce. Under the proposed amendment, the bona fide interstate commerce portion of leases or rentals would not be taxed and the lessee, rather than the lessor, would be responsible for remitting the tax to the department on these rentals. Data is not available to estimate the number of individuals or businesses that will benefit by this change or the amount of the affected lease or rental payments. Local governmental taxing authorities may also incur a revenue loss if they choose to adopt this amendment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Individuals and businesses operating in Louisiana in both interstate and intrastate commerce that lease or rent tangible personal property in Louisiana will benefit from this proposed amendment. The amount of the benefit cannot be determined. Taxpayers using the formula will be required to document their rental activity in order to calculate the taxes to be paid, which should not result in increased administrative costs, as taxpayers normally maintain such records.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed amendment should have no effect on competition or employment.

John Neely Kennedy
Secretary
9709#035

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Revenue Severance Tax Division

Severance Tax on Timber, Pulpwood, and Minerals Other Than Gas and Oil (LAC 61:I.2901)

Under the authority of R.S. 47:631 and 633 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Severance Tax Division proposes to amend LAC 61:I.2901 to reflect changes to the severance tax statutes.

Act 40 of the 1997 Regular Legislative Session amended R.S. 47:631 and repealed R.S. 47:633(17), effective August 15, 1997, to repeal the \$0.06 per ton severance tax on gravel. Act 460 of the 1975 Regular Legislative Session amended R.S. 47:633(3), effective December 1, 1975, to change the way timber is taxed to a percentage of the market value rather than the species. Amendments to the severance tax regulations are to reflect these statutory changes.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered By the Secretary of Revenue

Chapter 29. Natural Resources: Severance Tax §2901. Severance Tax on Timber, Pulpwood, and Minerals Other Than Gas and Oil

A. In General

1. The *severance tax* imposed by R.S. 47:631 is an excise tax upon the privilege of severing any natural resources

from the soil or water. All resources found in a natural state which are of any commercial value whatsoever are natural resources and are subject to the severance tax.

2.a. *Severance* means the separation of the natural resource from the soil or water, or its removal from its natural position.

For example: the dredging of sand from a river; the cutting of timber; or the mining or removal of a mineral from its natural location.

b. Severance does not refer to the refinement of a natural resource after its removal.

3. *Severer* means any person engaged in the operation of severing natural resources from the soil or water, whether that person is the owner of the soil or water; or other person severing from the soil or water of another; or the owner of a natural resource severing from the soil or water of another.

4. The tax is due by the severer, whether the natural resource is used by him or sold to another. If it is used by the severer, the tax is due by the severer. If it is sold, the tax is due by the severer; or by the purchaser, if for any reason it is not paid by the severer. If the natural resource is sold to the state or to the federal government, the tax is still due because the liability for the tax falls primarily on the severer and not on the purchaser. The tax is due on all natural resources removed from the state after severance and must be paid to the state of Louisiana. There is no provision of the law to exempt the parish, municipality, nor any board or agency of the state of Louisiana from the payment of this tax. However, the tax is not due or owed by a town, parish, or other political subdivision of the state which engages in severing sand or any other natural resource for its own use. Among the resources included are all forms of timber, pulpwood, and minerals such as sulphur, salt, coal, lignite, and ores; also marble, stone, sand, shells, and other natural deposits; and the salt content in brine.

B. Reports and Payment of Tax

1. By Severers

a. Every person severing any natural resource from the soil or water of the state must file a report, on forms obtained from the Department of Revenue, on or before the last day of the month following the month during which the natural resource is severed. It is necessary that the report be filed in duplicate. The tax due shall become delinquent after the last day of the month in which the tax is due and payable. For example, the tax due for products severed in October will become delinquent on the first day of December if not paid on or before November 30. Delinquent reports and tax shall be subject to penalties, interest, and other additional costs. The report, together with payment for the tax due thereon, is required to be delivered (by mail or in person) to the cashier's division of the Department of Revenue showing the following information in the spaces provided therefor:

- i. parish in which resource is severed and the month during which severed;
- ii. the name and address of the person or corporation making the report;
- iii. the product severed, the quantity and amount of tax;
- iv. all the information in the schedules on the reverse side of the report form, where applicable.

b. In cases where there were no operations during the month, a report must be filed indicating "no operations." Each report must be signed by the reporting taxpayer or officer of the corporation under declaration that it is made under the penalties imposed for perjury.

2. By Purchasers. On or before the last day of the month following the month to which the tax is applicable, purchasers and other persons dealing in any natural product severed from the soil or water in Louisiana shall deliver to the cashier's division of the Department of Revenue a monthly report on forms procured from the department. The report must be signed under the declaration that is made under the penalties imposed for perjury and must show on the reverse side the names and addresses of all persons from whom they have purchased any natural product during the month, together with the total quantity of each natural product. At the time of making the report, the purchaser or other dealer shall pay to the secretary the amount of tax deducted or withheld at the time of the purchase. If, for example, the seller had paid the severance tax, none would be due by the purchaser; however, the purchaser must file a monthly report showing the name and address of each person from whom the purchases were made, as well as the quantity and kind of product purchased.

C. Types of Product and Tax Rates

1. Timber. Severance tax must be paid on all trees and timber severed from the soil or water in Louisiana. Timber may be cut in Louisiana and transferred to another state to be made into lumber or other products, but the severance tax must be paid to the state of Louisiana regardless of the use after severance. In cases where the timber is cut by private interests in national forests, the usual practice is to scale and pay for the timber prior to cutting, and the purchaser or severer is thus liable for the severance tax. Whether the timber is scaled before or after cutting, the severance tax is collected from the purchasers on timber cut by them in national forests located in Louisiana. The rate, per ton, is established by applying the statutory tax rate to the average stumpage market value determined annually by the Louisiana Forestry Commission and the Louisiana Tax Commission. Because of the fluctuating market from year to year, it is necessary that the taxpayer use the proper report form applicable to the year for which his monthly report is being filed.

2. Pulpwood. The severance tax must also be paid on all trees and timber classified as pulpwood, both hardwood and pine. The rate per ton is established by applying the statutory tax rate to the annual average market value as determined by the Louisiana Forestry Commission and the Louisiana Tax Commission. Like timber, the pulpwood severance tax must be reported on the proper form for the year in which the monthly report is filed.

3. Sand

a. Sand is a noncohesive granular material consisting of particles finer than 10 mesh, 2.00 mm, but coarser than 200 mesh, 0.074 mm in size. For taxable purposes, sand is divided into three categories:

- i. washed sand;
- ii. river sand; and
- iii. other sand.

b. Sand contained in a sand-clay gravel mixture or pit-run gravel mixture is specifically excluded from those three categories and the provisions applicable thereto. In the case of materials which have been blended from two or more sources, the determination as to whether the blended materials constitute sand, as defined below, must be made separately on the basis of the materials severed from each source. The severance tax rate on sand is \$0.06 per ton of 2,000 pounds. If production records as well as sales records are kept on a cubic-yard basis, it would be necessary to convert cubic yards to tons for the purpose of reporting and paying the severance tax. The official conversion factors are based on 2,700 pounds per cubic yard, and the factors for the three categories of sand are shown below:

	Cubic Yards to Tons Conversion Factor
Washed Sand	1.35
River Sand (8% by weight allowance included)	1.24
Other Sand (8% by weight allowance included)	1.24

Computation of tax:
cubic yards x conversion factor = tax

c. Washed Sand. In the case of washed sand, the entire weight will be considered to be taxable without any allowance for foreign substances.

d. River Sand. River sand or fill material removed from the Mississippi River, or batture, or other rivers and bodies of water will be deemed to be taxable in the absence of the submission of written proof that more than 15 percent by weight of such material consists of foreign substances (silt and other foreign matter). An exclusion from the tax of 8 percent of the entire weight severed will be allowed for silt without the necessity of supporting such allowance with representative samples or other proof. However, an exclusion in excess of 8 percent by weight will not be allowed without submission of proof that the foreign substances contained in the material severed exceeds 8 percent by weight.

e. Other Sand

i. Other sand will be considered to be subject to tax if it constitutes 85 percent by weight or more of the materials extracted, as defined under "sand" above. An exclusion from the tax of 8 percent of the entire weight severed will be allowed for foreign substances without the necessity of supporting such allowance with representative samples or other proof. However, an exclusion in excess of 8 percent by weight will not be allowed without submission of proof that the foreign substances contained in the material severed exceeds 8 percent by weight.

ii. It is the responsibility of the severer, purchaser, and user, to establish, to the satisfaction of the secretary, that soil on which the sand severance tax is not being paid does not constitute sand, as defined above. For this purpose, the secretary may require the submission of representative samples from each separate source and such other data as he may consider appropriate. It is also the responsibility of the

severer, purchaser, and user to maintain adequate records as to the quantity, quality, and taxable status of such materials by source.

4. Shells. The two principal kinds of shell are clam and reef or oyster. The shells shall be reasonably free from objectionable matter much as sticks, mud, clay lumps, or other foreign materials. Severance tax on shells shall be paid on actual weight including moisture and foreign matter up to, but not in excess of, 12 percent. The rate of tax is \$0.06 per ton of 2,000 pounds. For the purpose of reporting and paying the severance tax, where the production and sales records are kept on a cubic-yard basis, it is necessary to utilize the conversion table shown below.

	Conversion Factor
Shells (reef or oyster) 1500 lbs. per cu. yd.	.75
Shells (clam) 1750 lbs. per cu. yd.	.875

Computation of tax:
cubic yards x conversion factor = tons x rate = tax

5. Stone. Generally, crushed stone is recognized as consisting of clean, tough, sound, durable particles of stone. The severance tax rate on stone is \$0.03 per ton of 2,000 pounds. Where production and sales records are kept on a cubic-yard basis, it is necessary to convert to tons for severance tax reporting and paying purposes. The conversion table is shown below:

	Conversion Factor
Stone (crushed) 2700 lbs. per cu. yd.	1.35

Computation of tax:
Cubic yards x conversion factor = tons x rate = tax

6. Marble. Generally, marble is defined as any limestone, granular to compact in texture, capable of taking polish or of being used for fine architectural work. Marble (proper) differs from common limestone in being more or less crystallized by metamorphism. The severance tax rate on marble is \$0.20 per ton of 2,000 pounds.

7. Minerals. There is a severance tax on the salt content in brine (commonly referred to as salt brine) extracted or produced in solution from the soil or water, when the same is used in the manufacture of other products and is not marketed as salt. The severance tax rates for the minerals in this Section are as follows:

Sulphur	\$1.03 per long ton of 2,240 pounds
Salt	\$0.06 per ton of 2,000 pounds
Salt content in brine	\$0.005 per ton of 2,000 pounds
Coal	\$0.10 per ton of 2,000 pounds
Lignite	\$0.12 per ton of 2,000 pounds
Ores	\$0.10 per ton of 2,000 pounds

AUTHORITY NOTE: Adopted in accordance with R.S. 47:631 and 633.

HISTORICAL NOTE: Adopted by the Department of Revenue and Taxation, Severance Tax Section, October 1970, promulgated LR 13:111 (February 1987), amended by the Department of Revenue, Severance Tax Division, LR 23:

Interested persons may submit data, views, or arguments, in writing to Carl Reilly, Assistant Director of the Severance Tax Division, Department of Revenue, Box 3863, Baton Rouge, LA 70821 or by FAX to (504) 925-3862. All comments must be submitted by 4:30 p.m., Tuesday, October 28, 1997.

A public hearing will be held on Wednesday, October 29, 1997, at 1 p.m. in the Department of Revenue secretary's conference room, 330 North Ardenwood Drive, Baton Rouge, LA.

John Neely Kennedy
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Severance Tax on Timber, Pulpwood and
Minerals Other Than Gas and Oil**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of these amendments will result in no additional costs to state or local governments.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The amendments to the timber severance tax provisions will have no effect on state or local revenue collections. These amendments conform the regulations to actual practice in effect since passage of Act 460 of the 1975 Regular Legislative Session.

The amendments to the gravel severance tax provisions conform the regulations to Act 40 of the 1997 Regular Legislative Session that repealed the severance tax on gravel. The act will reduce state and local revenue collections by approximately \$320,000 per year and \$80,000 per year, respectively.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Act 40 of the 1997 Regular Legislative Session will reduce the tax costs of severing gravel by a total of approximately \$400,000 per year. This cost reduction will directly benefit entities engaged in that activity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is unlikely that the repeal of the severance tax on gravel will materially affect competition and employment in the gravel mining industry or in industries that utilize gravel.

John Neely Kennedy
Secretary
9709#020

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Social Services Office of Family Support

Family Independence Temporary Assistance Program (FITAP)—Earned Income Deductions (LAC 67:III.1149 and 1163)

The Department of Social Services, Office of Family Support proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP), which has replaced the Aid to Families with Dependent Children (AFDC) Program.

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, empowered the state to establish a cash assistance program for the expenditure of federal funds for the Temporary Assistance to Needy Families Block Grant. The 1997 Regular Session of the Louisiana Legislature established an earned income deduction which will be applied in determining eligibility and benefits. This rule proposes these regulations and repeals §1163 which will become obsolete.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 11. Application, Eligibility and Furnishing Assistance

Subchapter C. Need and Amount of Assistance

§1149. Earned Income Deductions

Each individual in the income unit who has earned income is entitled to a standard deduction, a \$900 time-limited deduction, and in certain circumstances, to a deduction for dependent care. The deductions are applied in the following order, and no other deductions are allowed:

1. **Standard Deduction.** The standard deduction is \$120.

2. **\$900 Time-Limited Deduction.** This deduction is applied for six months when a recipient's earnings exceed the \$120 standard deduction. The months need not be consecutive nor within the same certification periods. The deduction is applicable for a six-month lifetime limit for the individual.

3. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), amended LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), amended by the Department of Social Services, Office of Family Support, LR 18:869 (August 1992), LR 24:

§1163. Extension of \$30 Disregard Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369, PL 100-485 and F.R. 49:35586 et seq., R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:1030 (December 1984), amended by Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), repealed by the Department of Social Services, Office of Family Support, LR 24:

Interested persons may submit written comments within 30 days to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-4065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on October 28, 1997, in the Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 504-342-4120 (voice and TDD).

Madlyn B. Bagneris
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Family Independence Temporary Assistance Program (FITAP)

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed changes will cost an estimated \$6,255,810 in FY 98 and \$16,232,832 in FY 99 and FY 00 in benefits to recipients. There is no effect on local governmental units. (Note: Funding of benefits is from the Federal TANF Block Grant.)
- 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)
Recipients of FITAP benefits would be eligible for increased benefits due to the change in the standard deduction and the \$900 time-limited deduction.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9709#071

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

Family Independence Temporary Assistance Program (FITAP)—Eligibility and Exceptions (LAC 67:III.Chapters 9, 11, and 13)

The Department of Social Services, Office of Family Support proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP), which has replaced the Aid to Families with Dependent Children (AFDC) Program.

Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, empowered the state to establish a cash assistance program for the expenditure of federal funds for the Temporary Assistance to Needy Families Block Grant. The 1997 Regular Session of the Louisiana Legislature adopted laws which establish FITAP as Louisiana's program. Subsequently, this notice of intent proposes new regulations regarding controlled substance convictions and domestic violence, respectively in §§1118 and 1126, and other revised regulations.

Additionally, whereas the family independence project promulgated in Chapter 13 has been supplanted by FITAP regulations, this proposed rule continues and relocates the eligibility conditions of the project in Chapter 11, new §§1114, 1120, 1122 and 1124. The regulation in §1129 is being relocated to §1115. Some sections are also being repealed due to obsolescence.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 9. Administration

§901. Authority

The Family Independence Temporary Assistance Program (FITAP) has been established in accordance with applicable federal and state laws.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 17:1226 (December 1991), amended LR 23:

Chapter 11. Application, Eligibility and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1114. Time Limits

A. The Office of Family Support shall deny FITAP cash benefits to families if the parent has received FITAP for at least 24 months during the prior 60-month period. Only months of FITAP receipt after the January 1, 1997 implementation date count toward the 24-month limit.

1. This provision does not apply in the following situations.

2. In two parent households both parents must meet at least one of these criteria:

- a. the parent is incapacitated or disabled;
- b. the parent has been actively seeking employment by engaging in job-seeking activities and is unable to find employment;
- c. factors relating to job availability are unfavorable;
- d. the parent loses his job as a result of factors not related to his job performance; or
- e. an extension of benefits of up to one year will enable the adult to complete employment related education or training.

B. Eligibility for cash assistance under a program funded by Part IV of the Social Security Act is limited to a lifetime limit of 60 months. No cash assistance will be provided to a family that includes an adult who has received assistance for 60 months (whether or not consecutive). Any month for which such assistance was provided will be disregarded with respect to the individual, if the individual was:

1. a minor child; and
2. not the head of a household or married to the head of a household.

C. Assistance is not denied to an incapacitated or disabled individual in an assistance unit/household which is subject to the time limitation provisions. Assistance for the incapacitated or disabled individual continues as long as the family continues to meet all other FITAP eligibility requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:231.6 and HCR 31, Regular Session, 1997.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:

§1115. Resource Limit

A. - B.2. ...

3. One burial plot and one funeral agreement per family member shall be exempt from the FITAP resource limitation. Real property which the family is making a good faith effort to sell shall also be exempt for nine months, provided the family agrees to repay the FITAP benefits received during that time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:443.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), amended by the Department of Social Services, Office of Family Support, LR 19:1340 (October 1993), LR 23:

§1118. Individuals Convicted of a Felony Involving a Controlled Substance

An individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act, 21 U.S.C.802(6)) shall be disqualified from receiving cash assistance for a period of one year, commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall not apply to convictions occurring on or before August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:233.1.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:449 (April 1997), amended LR 23:

§1120. Immunization

Failure to follow the schedule of immunizations as promulgated by the Louisiana Office of Public Health for any child under 18 years of age, without good cause, shall result in the child's removal from the FITAP grant until the child has received the required immunizations, or, in the case of an immunization that requires a series of injections, has begun to receive the injections. No person is required to comply with this provision if that person or his/her parent or guardian submits a written statement from a physician stating that the immunization procedure is contraindicated for medical reasons, or if the person or his/her parent or guardian objects to the procedure on religious grounds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:231.4.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:

§1122. School Attendance

At redetermination, a child who has missed more than 15 days of school without good cause during the previous six-month period shall be placed in a probationary status. If during the probationary period a child is absent from school for more than three days in a given calendar month without good cause, the child's needs shall be removed from the FITAP grant until documentation that the child's attendance meets the requirements is provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:231.3.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:

§1123. Retrospective Budgeting/Monthly Reporting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402), 45 CFR 205-206,233-234, and R.S. 46:231.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), repealed by the Department of Social Services, Office of Family Support, LR 23:

§1124. Sanctions for Refusal to Accept a Job

Eligibility for FITAP shall be terminated for three months if a parent in the assistance unit declines or refuses the opportunity for full-time employment without good cause. The three-month sanction period counts as months of FITAP receipt when applying the 24-month time limit. Assistance is not denied to an incapacitated or disabled individual in an assistance unit/household which is subject to sanction for refusal to accept full-time employment. Assistance for the incapacitated or disabled individual continues as long as the family continues to meet all other FITAP eligibility requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:231.6.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:

§1125. Monthly Reporting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98 369, F.R. 49:35586 et seq. and R.S. 46:231.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:1030

(December 1984), repealed by the Department of Social Services, Office of Family Support, LR 23:

§1126. Domestic Violence

A. The secretary shall waive, for as long as necessary, pursuant to a determination of good cause, any public assistance program requirement that will create obstacles for a victim of domestic violence to escape a domestic violence situation, including but not limited to, time limits on receipt of assistance; work, training, or educational requirements; limitations on TANF assistance to noncitizens; child support or paternity establishment cooperation requirements; residency requirements; and any other program requirements which will create obstacles for such victim to escape violence or penalize that victim for past, present, and potential for abuse.

B. Any information obtained pursuant to this Section regarding a victim of domestic violence shall be used solely for the purposes provided for in this Section or for referral to supportive services and shall not be released to any third party, including a governmental agency, unless such agency is authorized to obtain such information by another provision of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:460.4 (Act 1248 of the 1997 Regular Session).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:

§1129. Resource Exclusions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369, F.R. 49:35586 et seq. and R.S. 46:231.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:1030 (December 1984), repealed by the Department of Social Services, Office of Family Support, LR 23:

Subchapter G. Work Programs

§1189. Exemption in Non-Win Parishes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 233.10 (a)(1)(ii)(B) and R.S. 46:231.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:115 (February 1986), repealed by the Department of Social Services, Office of Family Support, LR 23:

§1191. Work or Work Registration Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402), 45 CFR 205-206, 233-234 and R.S. 46:231.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), repealed by the Department of Social Services, Office of Family Support, LR 23:

§1193. Work Registration Requirements for Pregnant Women

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369, F.R. 49:35586 et seq. and R.S. 46:231.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), repealed by the Department of Social Services, Office of Family Support, LR 23:

Chapter 13. Reserved (formerly Special Conditions of Eligibility)

Subchapter A. Reserved (formerly Family Independence Project)

§1301. Reserved (formerly Terms and Conditions)

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:231.2, R.S. 46:447.3, 46:460, 46:474, 46:477, 46:239, 46:459 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:1232 (December 1996), amended LR 23:449 (April 1997), repealed LR 23:

Interested persons may submit written comments within 30 days to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-4065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on October 28, 1997, in the Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504)342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Family Independence Temporary Assistance Program (FITAP)—Eligibility and Exceptions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

As a result of this proposed rule, the disqualification period for receiving cash assistance by individuals convicted of a drug-related felony is changed from permanently to one year. This will result in some individuals gaining new eligibility after one year. Other persons will be eligible for benefits because of the exceptions allowed for the domestic violence regulations. The department has no data on which to project numbers for computing costs. There are sufficient funds allocated in FY 97/98 to cover the routine implementation costs of publishing the rule and printing policy revisions. No effect is anticipated on 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)

Clients affected by the drug conviction regulation will be ineligible for cash assistance for one year rather than permanently. Those clients to whom the domestic violence regulations apply will benefit from assistance they might have previously not received. Since this agency policy is new, the actual economic impact cannot be projected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9709#070

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Food Stamps—Collection Methods
and Penalties (LAC 67:III.2005)**

The Department of Social Services, Office of Family Support proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to Public Law 104-134, the Debt Collection Improvement Act of 1996, delinquent food stamp recipient claims will now be referred to the Department of the Treasury for possible collection from certain federal payments. Collections made by the Financial Management Service (FMS), Department of the Treasury will result in the individual owing the delinquent claim being responsible for payment of an administrative fee charged by FMS. Fees have previously been assessed only on collections made through federal tax refund offsets. Under the Debt Collection Act, the Department of the Treasury assumes responsibility for federal tax refund and salary offsets and for administrative offset, and fees will be charged for collection in these areas.

Title 67

Social Services

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter P. Recovery of Overissued Food Stamp Benefits

§2005. Collection Methods and Penalties

D. The agency may collect any type of over issuance by using means other than allotment reduction or cash repayment.

1. One of these means is the referral of delinquent food stamp claims to the Department of the Treasury for collection through the Federal Tax Refund Offset Program, the Federal Salary Offset Program, and the Administrative Offset Program. Administrative offset is the withholding of other funds payable by the federal government which may include, but not be limited to, federal retirement payments, military retirement, contractor/vendor payments, Railroad Retirement and Social Security payments. The Financial Management Service of the Treasury Department will charge an administrative fee for all collection services, and this fee will be added to the claim and deducted with any federal offset.

AUTHORITY NOTE: Promulgated in accordance with F.R. 48:6837 et seq., P.L. 97-35, 97-253, 101-624 §1746, and 102-237 §911, 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:391 (April 1994), LR 20:780 (July 1994), LR 20:899 (August 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:189 (February 1995), LR 22:584 (July 1996), LR 23:83 (January 1997), LR 24:

Interested persons may submit written comments within 30 days to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on October 28, 1997 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA, at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 504-342-4120 (voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Food Stamps—
Collection Methods and Penalties**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs or savings to state or local governmental units associated with this proposed rule. The administrative cost of publishing the proposed rule and printing policy revisions is negligible.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The state will collect more delinquent food stamp debts through the addition of the Administrative Offset Program. There is no effect on local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This action will affect a small number of former recipients who owe delinquent food stamp debts and receive certain federal benefits which are subject to the Administrative Offset Program. These individuals will be responsible for the administrative fee charged to collect the amount owed on their delinquent food stamp debt. The agency has been utilizing collection through intercept of federal income tax refunds and federal salaries since 1993, and fees charged by the IRS have been passed on to the individual owing the debt since 1997. Delinquent debts will be referred to the U.S. Department of Treasury, rather than directly to the IRS, as that department has been given primary responsibility to act as the federal collection agency for delinquent debts. The administrative fee shall be determined by the Department of the Treasury's Financial

Management Service. Fees have previously averaged \$10 or less.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9709#062

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Food Stamps—Disqualification
(LAC 67:III.1988)**

The 1997 Regular Session of the Louisiana Legislature adopted laws which affect policy pertaining to the Food Stamp Program. Subsequently, the Department of Social Services, Office of Family Support proposes to amend LAC 67:III.1988 to change the disqualification period from permanent to a one-year period for those persons convicted of crimes that involve the possession, use, or distribution of a controlled substance.

Title 67

SOCIAL SERVICES

**Part III. Office of Family Support
Subpart 3. Food Stamps**

**Chapter 19. Certification of Eligible Households
Subchapter J. Determining Household Eligibility and
Benefit Levels**

§1988. Eligibility Disqualification of Certain Recipients

A. ...

B. An individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act, 21 U.S.C. 802[6]), shall be disqualified from receiving food stamp benefits for a period of one year commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall not apply to convictions occurring on or before August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:233.1 (Act 1351 of the 1997 Regular Session).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:449 (April 1997), amended LR 23:

Interested persons may submit written comments within 30 days to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on October 28, 1997, at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in

writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504)342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Food Stamps—Disqualification**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs or savings to state or local governmental units associated with this proposed rule. Food stamp benefits are 100 percent federally funded.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collection of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This action will affect a small number of current and future food stamp recipients as persons convicted of a felony involving a controlled substance will be disqualified from receiving food stamps for a period of one year rather than permanently. The agency is unable to give an estimate as there is no way to determine the number of persons who would be involved. There are no costs or benefits to nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9709#069

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of the Secretary
Bureau of Licensing**

Adult Day Care Center
(LAC 48:I.Chapter 43)

The Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to amend the *Louisiana Administrative Code*, Title 48, Part 1, Subpart 3, Licensing and Certification.

This proposed rule is mandated by R.S. 46:1971-1980.

These standards are being revised to supersede any previous regulations heretofore published.

**Title 48
PUBLIC HEALTH - GENERAL
Part I. General Administration
Subpart 3. Licensing and Certification
Chapter 43. Adult Day Care Center
§4301. Purpose**

The overall purpose of these regulations is the well-being of persons involved in adult day care programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4303. Authority

A. Legal Authority. The legal authority of these regulations and of the licensing authority of the Department of Social Services (DSS) is found in the following statutes:

- R.S. 46:51;
- R.S. Title 28 Sections 1 through 2;
- R.S. Title 28 Sections 421 through 427;
- R.S. Title 46 Sections 1971 through 1980;
- R.S. Title 46 Section 2102; and
- 29 U.S.C. 795K (34CFR Part 363) (P.L. 99-506).

B. Effective Date. These regulations (LAC 48:I.Chapter 43) are effective upon publication as a final rule in the *Louisiana Register*, in accordance with the Administrative Procedure Act.

C. Penalties

1. All adult day care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency shall be licensed.

2. Any person operating an adult day care facility, as defined in R.S. 46:1972, in violation of this Chapter, shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 for each such offense. Each day of operation in violation of this Chapter shall constitute a separate offense.

D. Inspections

1. According to law, it shall be the duty of the Department of Social Services "through its duly authorized agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the department, and without previous notice all adult day care facilities subject to the provisions of the Chapter" (R.S. 46:1971-1980).

2. Whenever the department is advised, or has reason to believe, that any person, agency, or organization is operating an adult day care facility without a license or provisional license, the department shall make an investigation to ascertain the facts.

3. Whenever the department is advised, or has reason to believe, that any person, agency, or organization is operating in violation of the Adult Day Care Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment of clients coming to the attention of the Department of Social Services will be investigated.

E. Waivers

1. The secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the clients/staff are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

2. All waivers must be reviewed at least annually for continuance. However, a waiver may be withdrawn when it is determined that it was issued in error; situations have changed as to why the waiver was first issued; or when the provider has not complied with agreed-upon stipulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4305. Types of Programs (Modules) Licensed

A. Sheltered Workshop

1. This is a facility-based program providing prevocational and vocational training to functionally-impaired adults that is comprehensive in nature, and offers opportunity for structured work among a variety of other services.

2. This module shall meet standards listed in §§4301-4329.

B. Enclave Module

1. *Enclave Module*—a work group of functionally-impaired individuals performing real work in a business or industrial setting among typical co-workers with supervision, training, and support provided both by the host company and the provider. Payment for work performed is made in compliance with Department of Labor regulations. Opportunities for integration with typical co-workers are facilitated through use of common dining facilities, break areas, and other settings/events that may be appropriate.

2. A provider with the enclave module must meet the applicable requirements/standards (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

C. Mobile Work Crew Module

1. Mobile work crew module is:

- a. designed to provide employment through contracts in the community;
- b. typically comprised of eight or fewer individuals with a staff person;
- c. operated at a customer's site, rather than at the provider's building, performing service jobs in the community;
- d. typically contracted to provide grounds-keeping and janitorial services; and
- e. useful in providing meaningful wages and constant opportunities for crew members to interact with nonhandicapped people in the community.

2. A provider with the mobile work crew module must meet the applicable requirements (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

D. Psychosocial Module

1. This module is concerned with individuals who need emphasis on social and enhancement skills. Staff is involved in a highly interactive manner with clients in the day program in an effort to build friendship and other skills in the clients.

2. This module must meet standards listed in §§4301-4323. If services are provided within the facility, all standards shall be met.

E. Supported Competitive Jobs Module

1. Supported competitive jobs module requires staff to locate jobs in the community, match individuals to those jobs and provide ongoing support. Wages are commensurate to the work performed, and workers are highly integrated with nonhandicapped workers.

2. A provider with the supported competitive jobs module must meet the applicable requirements (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

F. Community Rehabilitation Program Module

1. *Community Rehabilitation Program (CRP)*—a program that provides vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement.

2. A Community Rehabilitation Program may also provide services compatible with any or all of the modules listed above under §4305.

3. A CRP must meet standards listed in §§4301-4323. If the services are provided within the facility, all standards shall be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4307. Definitions

Administrator—the owner or the manager designated by the governing body as responsible for the management, administration, and supervision of the program.

Adult Day Care—a group program designed to meet the individual needs of functionally-impaired adults that is structured and comprehensive and provides a variety of health, social, vocational, or related services in a protective setting for a portion of a 24-hour day.

Adult Day Care Center—any place owned or operated for profit, or not for profit, by a person, society, agency, corporation, institution, or any other group wherein are received, for a portion of a 24-hour day, 10 or more functionally-impaired adults who are not related to the owner or operator of the facility for the purpose of supervision or participation in a training program. If the facility receives state or federal funding, directly or indirectly, it must be licensed regardless of the number of adults in its care.

Change of Ownership—transfer of ownership to someone other than the owner listed on the initial application.

Ownership of the business, not the building, determines the owner.

Department (DSS)—the Department of Social Services.

Director—the full-time staff responsible for the day-to-day operation of the facility or program as recorded with the Bureau of Licensing. For the purpose of these regulations, the term *director* also refers to director designee, if applicable.

Director Designee—the on-site staff appointed by the director when the director is not a full-time employee of the licensed location. This staff shall meet director qualifications.

Documentation—written evidence or proof, signed and dated.

Facility—adult day care center(s).

Functionally-Impaired Adult—a person 17 years of age or older who is physically, mentally, or socially impaired to a degree requiring supervision.

Human Services Field—means psychology, sociology, special education, rehabilitation counseling, juvenile justice, corrections, nursing, etc.

Owner or Operator—the actual owner of a facility, i.e., the person who owns or controls a facility either directly or indirectly.

Physically, Mentally or Socially Impaired—any impairment, physical or mental, that limits one or more of the following major life activities:

1. self-care;
2. receptive or expressive language;
3. learning;
4. mobility;
5. self-direction;
6. capacity for independence;
7. economic self-sufficiency.

Provider—the owner of an adult day care facility and the representatives, agents, and employees of the facility. If the owner is a closely held corporation or a nonprofit organization, provider includes the natural persons with actual ownership or control over the corporation and the corporation's officers, directors, and shareholders.

Universal Precautions—the infectious disease control precautions recommended by the Center for Disease Control to be used in all situations to prevent transmission of blood-borne pathogens (e.g., human immunodeficiency virus, hepatitis B virus).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4309. Procedures

A. Initial Application. Facilities applying for a license after the effective date of these standards shall meet all of the requirements herein. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services.

1. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area of the planned facility location. Guidelines from the Office of Public Health, Sanitarian Services; Office of State Fire

Marshal and Office of City Fire Department (if applicable) should be obtained.

2. After securing property, obtain an application form issued by the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078; Telephone: (504) 922-0015 and by FAX (504) 922-0014.

3. The completed application shall indicate the type of adult day care module(s) that will be provided. An initial application fee shall accompany all applications.

4. Nonprofit providers shall submit documentation of nonprofit status with the completed application and initial fee.

5. After the facility's location has been established, complete and return the application form. The applicant must contact the following offices prior to building or renovating a facility:

- a. Office of Public Health, Sanitarian Services (if applicable);
- b. Office of State Fire Marshal (if applicable);
- c. Office of City Fire Department (if applicable);
- d. Zoning Department (if applicable);
- e. City or Parish Building Permit Office.

6. After the application has been received by the department, a request will be made to the Office of State Fire Marshal, Office of City Fire Department, Office of Public Health, and any known required local agencies, as applicable, to make an inspection of the location, as per their standards. It is the applicant's responsibility to obtain these inspections and approvals. A licensing specialist will visit the facility to conduct a licensing inspection.

7. A license will be issued on an initial application when the following items have been met and verification is received by the Bureau of Licensing:

- a. fire approval (state and/or city) (if applicable);
- b. health approval (if applicable);
- c. zoning (if applicable);
- d. full licensure fee where applicable;
- e. licensure survey verifying substantial compliance;
- f. director meets qualifications.

8. When a provider changes location, it is considered a new operation, and a new application and fee for licensure shall be submitted. All applicable items in §4309.A.7 above shall be re-submitted, except director qualifications if director remains the same.

9. When a provider changes ownership, a new application and fee for licensure shall be submitted. All applicable items in §4309.A.7 shall be current. Documentation is required from the previous owner assuring change of ownership, e.g., letter from previous owner, copy of bill of sale, or a lease agreement.

10. All new construction or renovation of a facility requires approval from agencies listed in §4309.A.5, if applicable.

11. The department is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued.

12. A license is not transferable to another person or location.

13. Separate licenses shall be required for facilities maintained on separate premises even though operated under

the same management or owner. Separate licenses will not be required for separate buildings on the same grounds.

14. If an owner/director or member of his immediate family has had a previous license revoked, refused, or denied, upon re-application, applicant shall provide written evidence that the reason for such revocation, refusal, or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal, or denial have been corrected, and the facility is in substantial compliance with all minimum standards.

B. Fees

1. Initial application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee, where applicable, when the provider is licensed. This fee shall be paid by all initial providers. *All* fees shall be paid by certified check or money order only and are nonrefundable.

2. Annual licensure fee of \$150 shall be submitted prior to issuance or renewal of the license, where applicable.

3. Licensure fee shall be waived for nonprofit providers.

4. Other licensure fees:

a. \$25 replacement fee for any provider replacing a license when changes are requested by the provider, e.g., change in capacity, name change, age range change. (No processing charge when request coincides with regular renewal of license.)

b. \$5 processing fee for issuing a duplicate provider license with no changes.

C. Relicensing

1. An application form shall be resubmitted annually to the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA, 70821-3078.

2. A provider changing ownership, or making any substantial changes in the services offered or in the buildings, shall reapply for a license. In the event of a change of ownership, the old license shall be immediately returned to the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078.

3. The Department of Social Services shall be notified prior to making changes which might have an effect upon the license (e.g., changes in program, services, physical plant of the facility, director, hours/months/days of operation, ownership, location).

4. A license is issued for a period of up to one year, based upon provider's compliance with minimum standards. Before expiration of the license, applicable re-inspections by the Office of Public Health, Sanitarian Services; Office of State Fire Marshal; Office of City Fire Department (if applicable) and Department of Social Services shall be required.

5. Licensing inspections are conducted at least annually and more often if deemed necessary by the department. No advance notice is given. Licensing specialists shall be given access to all of the areas in the facility, staff members, clients, and all relevant files and records. Licensing specialists will explain the licensing process in an initial interview and will report orally, and in writing, (the exit interview) to the director or designee on any deficiencies found during the inspection.

6. If the licensing inspection reveals that the provider is not substantially meeting minimum requirements, a recommendation will be made that a new license not be issued.

D. Denial, Revocation, or Nonrenewal of License. An application for a license may be denied, or a license may be revoked, or renewal thereof denied, for any of the following reasons:

1. violation of any provision of R.S. 46: 1971 through R.S. 46: 1980, or failure to meet any of the minimum standards, rules, regulations, or orders of the Department of Social Services promulgated thereunder;

2. cruelty or indifference to the welfare of the clients;

3. conviction of a felony, as shown by a certified copy of the record of the court of conviction, of the applicant or the members or the officers of the firm or corporation or the person designated to manage or supervise the facility;

4. the director is not reputable;

5. history of noncompliance;

6. failure of the provider to hire a qualified director;

7. disapproval from any agency whose approval is required for licensure;

8. nonpayment of licensure fee/failure to submit application for renewal prior to the expiration of the current license;

9. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse/neglect if the owner is responsible or if the employee who is responsible remains in the employment of the provider;

10. closure of the provider with no plans for reopening and no means of verifying compliance;

11. any act of fraud such as falsifying or altering documents required for licensure.

E. Appeal Procedure. If the license is refused, revoked, or denied because the provider does not meet minimum requirements for licensure, the procedure is as follows:

1. The Department of Social Services, by certified letter, shall advise the provider of the reasons for refusal, revocation, or denial and its right of appeal;

2. The director/owner may appeal this decision by submitting a written request, with the reasons, to the secretary of the Department of Social Services. Write to Department of Social Services, Appeals Section, Box 2944, Baton Rouge, LA 70821-9118. This written request must be post marked within 30 days of the director/owner's receipt of the above notification in §4309.E.1;

3. The Appeals Bureau of the Department of Social Services shall set a hearing to be held within 30 days after receipt of such a request;

4. An appeal hearing officer of the Department of Social Services shall conduct the hearing. Within 90 days after the date the appeal is filed, the Department of Social Services shall advise the appellant, by certified letter, of the decision, either affirming or reversing the original decision. If the license is refused or revoked, the provider shall terminate operation immediately;

5. If the provider continues to operate without a license, the Department of Social Services may seek injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971 through 1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4311. General Requirements

A. Licensing Authority. The provider shall allow representatives of the licensing agency and the appropriate program office(s), in the performance of their mandated duties, to inspect all aspects of a program's functioning which impact on clients and to interview staff members and clients.

1. The provider shall make any information required in these standards and any information reasonably related to assessment of compliance with these requirements available to the licensing agency and the appropriate program office(s).

i. The client's rights shall not be considered abridged by this requirement.

ii. A provider shall promptly provide all necessary and needed information for review.

iii. A provider shall provide adequate space and privacy for the licensing specialist to review records uninterrupted.

2. The administrator, or a person authorized to act on behalf of the administrator, shall be accessible to agency staff and designated representatives of the licensing agency at all times.

B. Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards, regulations, and requirements established by federal, state, local, and municipal regulatory bodies, including but not limited to:

1. the Office of Public Health;
2. the Office of the State Fire Marshal and Office of City Fire Department (if applicable);
3. the Department of Labor (if applicable);
4. fiscal and program review agencies (if applicable);
5. zoning approval (if applicable).

C. Documentation of Authority to Operate. A private provider shall be incorporated in the state of Louisiana.

1. A privately-owned provider shall have documents identifying the names and addresses of owners.

2. A corporation, partnership, or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, articles of association/incorporation, or bylaws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4313. Administration and Organization

A. Governing Body. The provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the provider.

1. The provider shall have documents identifying all members and officers of the governing body, their addresses, and their terms of membership, if applicable.

2. When the governing body of the provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, the provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

4. The bylaws or other written policy shall describe the circumstances under which a business relationship may exist between a member of the governing body and the provider, so as not to create a conflict of interest.

B. Responsibilities of a Governing Body. The governing body shall:

1. ensure the provider's compliance and conformity with the governing body's charter;

2. ensure the provider's continual compliance and conformity with all relevant federal and state laws and regulations;

3. review and approve the provider's annual budget;

4. ensure that the provider is housed, maintained, staffed, and equipped appropriately, considering the nature of the provider's program;

5. designate a person to act as administrator and delegate sufficient authority to this person to manage the provider;

6. formulate and annually review, in consultation with the administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices, and fiscal management;

7. annually evaluate the administrator's performance;

8. have the authority to dismiss the administrator;

9. meet with designated representatives of the licensing agency and the program office(s) whenever required to do so;

10. inform the licensing agency and the program office(s), in writing, prior to initiating any substantial changes in the program, services, or physical plant of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4315. Management Responsibilities

A. Administrative File. A provider shall have an administrative file including:

1. documents identifying the governing body;

2. list of members and officers of the governing body and their addresses and terms of membership, if applicable;

3. bylaws of the governing body and minutes of formal meetings, if applicable;

4. documentation of the provider's incorporation in the state;

5. organizational chart of the provider;

6. all leases, contracts, and purchase-of-service agreements to which the provider is a party;

7. insurance policies (The provider shall maintain in force at all times a comprehensive general liability insurance policy. The policy shall be in addition to any professional liability policies maintained by the provider. The provider shall extend coverage to any staff member who provides transportation for any client in the course and scope of his/her employment);

8. annual budgets;

9. incident reports and required documentation.

B. Program Description

1. The provider shall have a written program plan describing the services and programs offered by the provider.

2. The provider shall have a written policy regarding participation of clients in activities related to fundraising, publicity, photographing and audio, or audio-visual recordings of clients.

a. The written, informed consent of the client and, where appropriate, the legally responsible person, shall be obtained prior to participation in such activities.

b. Client involvement in these activities shall be in a manner which respects the dignity and confidentiality of the client.

3. The provider shall have written policies regarding the participation of clients in research projects. No client shall participate in any research project without the written, informed consent of the client and the client's legally responsible person, if applicable.

a. The provider shall have a detailed written description of any research projects approved.

b. The provider may conduct research for educational purposes as long as client names are not used or identified in any manner.

C. Client Rights. The provider shall have a written policy on client rights. This policy shall give assurances that:

1. a client's civil rights are not abridged or abrogated solely as a result of placement in the provider's program;

2. a client's civil rights are protected through accessibility or referral to legal counsel;

3. a client is not denied admission, segregated into programs, or otherwise subjected to discrimination on the basis of race, color, religion, sex, age, national origin, handicap, political beliefs, or any nonmerit factor, in accordance with all state and federal regulations.

D. Confidentiality and Security of Files

1. The provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. The provider, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. The provider shall maintain the confidentiality of all clients' case records. Employees, volunteers, and interns of the provider shall not disclose, or knowingly permit the disclosure of, any information concerning the client or his/her family, directly or indirectly, to any unauthorized person.

3. The provider shall implement and have written policies and procedures regarding the release of information. The client's file shall contain documentation concerning any information released with the individual's written consent. The

policies and procedures shall require that the release form shall:

a. specify the name of the person or agency to whom the information is released;

b. describe the information to be released;

c. specify the purpose for the release of information;

d. specify the length of time for which the release is valid, not to exceed one year; and

e. include the date and signature of the client or his/her legally responsible person, if applicable. The signature of two witnesses must be obtained when client signs with a mark.

4. The provider shall have a written policy which defines who has access to client records.

5. The provider's written policies shall ensure that information from the case record is made available to the client, the legally responsible person, or legal counsel of the client upon request. If, in the professional judgment of the provider, it is felt that the information contained in the record would be damaging to a client, that information *only* may be withheld from the client, except under court order.

E. Record Keeping

1. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state laws.

2. The provider shall ensure that all entries in records are legible, signed by the person making the entry, and accompanied by the date on which the entry was made.

3. The provider shall have sufficient space, facilities, and supplies for providing effective record keeping services.

F. Client's Case Record. A provider shall have a written record for each client which shall include:

1. the name, sex, race, birth date, and current address of the client;

2. date of admission to the program;

3. court status or legal status, and who is authorized to give consent;

4. client's history, including family data, employment record, and prior medical history;

5. current medication and any known allergies;

6. a copy of the client's individual service plan, any subsequent modifications, and any objectives to guide and assist direct service workers in implementing the client's program;

7. quarterly reviews and progress notes;

8. a copy of the discharge summary, when applicable;

9. critical incident reports;

10. reports of any client grievances and the conclusions or dispositions of these reports;

11. the name, address, and telephone number of the next of kin and/or legally responsible person;

12. a signed consent giving the provider authorization to obtain emergency medical care;

13. the name, address, and phone number of the client's physician and dentist;

14. client's evaluations as required in §4319.B.2.

G. Personnel File

1. The provider shall have a record for each staff member which shall contain:

- a. the application for employment or resumé;
- b. documentation of three reference checks;
- c. evidence of applicable professional credentials;
- d. in-service training records or summary;
- e. annual performance evaluations;
- f. personnel actions, reports, and notes relating to the individual's employment with the facility;
- g. employee's starting and termination dates;
- h. a satisfactory criminal history check, in accordance with state law;
- i. TB test result; and
- j. documentation of current driver's license for all staff who transport clients.

2. The provider shall have written policies ensuring that staff members have reasonable access to their file and are allowed to add any written statement they wish to the file.

3. The provider shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4317. Human Resources

A. Staff Plan/Personnel Practices. The provider shall have written personnel policies that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members;

a. the provider shall have a nondiscrimination policy prohibiting discrimination against any person on the basis of race, color, religion, sex, age, national origin, disability, veteran status, or any nonmerit factor;

b. the provider's screening procedures shall address the prospective staff member's qualifications, ability, and experience, as related to the appropriate job description;

c. prior to employing any person, the provider shall obtain written references or document phone contacts on oral references from three persons;

d. a satisfactory criminal history check shall be obtained by the provider, prior to an offer of employment, in accordance with state law;

e. all persons, prior to or at time of employment, shall be free of tuberculosis in a communicable state, as evidenced by:

- i. a negative Mantoux skin test for tuberculosis;
- ii. a normal chest x-ray if the aforementioned skin test is positive; or
- iii. a statement from a physician certifying that the individual is noninfectious if the chest x-ray is other than normal;

(a). any employee who has a negative Mantoux skin test for tuberculosis, in order to remain employed, shall be re-tested annually;

(b). any employee who has a positive Mantoux skin test for tuberculosis, in order to remain employed, shall complete an adequate course of therapy, as prescribed by a

licensed physician, or shall present a signed statement from a licensed physician stating that therapy is not indicated;

f. where certification or licensing standards exist for professional staff, these individuals shall possess current certifications/licenses. Documentation of such shall be on file and available for review;

g. the provider shall not knowingly hire, or continue to employ, any person whose history or current behavior impairs his/her ability to properly protect the health and safety of the clients or is such that it would endanger the physical or psychological well-being of the clients. This requirement is not to be interpreted to exclude continued employment in other than direct service capacities of persons undergoing temporary medical or emotional problems;

h. the provider shall complete an annual performance evaluation of all staff members. For any person who interacts with clients, a provider's performance evaluation procedures shall address the quality and nature of a staff member's relationships with clients;

2. written job descriptions for each staff position;

3. written employee grievance procedure.

B. Orientation

1. A provider's orientation program shall include training in the following topics for *all* employees:

a. philosophy, organization, program, practices, and goals of the provider;

b. instruction in the specific responsibilities of the employee's job;

c. the provider's emergency and safety procedures, including medical emergencies;

d. detecting and reporting suspected abuse and neglect;

e. reporting critical incidents;

f. client rights; and

g. universal precautions.

2. Orientation for direct-care staff shall include additional training in the following topics:

a. implementation of service plans;

b. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

c. basic skills required to meet the health needs and problems of the clients;

d. passive physical restraint;

e. crisis de-escalation and the management of aggressive behavior, including acceptable and prohibited responses; and

f. safe administration and handling of all medications.

3. All direct care employees shall receive certification in adult CPR and first aid within the first 30 days of employment.

4. A new direct care employee shall not be given sole responsibility for the implementation of a client's program plan until all required training is completed.

5. The employee shall sign a statement of understanding certifying that such training has occurred.

C. Annual Training

1. A provider shall document that *all* employees receive training on an annual basis in the following topics:

a. provider's policies and procedures;

- b. emergency and safety procedures;
- c. medical emergencies;
- d. client's rights;
- e. detecting and reporting suspected abuse and neglect;
- f. reporting critical incidents;
- g. universal precautions.

2. Direct care staff shall receive additional annual training in the following topics:

- a. training in implementation of service plans;
- b. confidentiality;
- c. detecting signs of illness or dysfunction that warrant medical or nursing intervention;
- d. basic skills required to meet the health needs and problems of the client;
- e. passive physical restraint;
- f. crisis de-escalation; and
- g. the management of aggressive behavior, including acceptable and prohibited responses.

3. All direct care staff shall have documentation of current certification in first aid and CPR.

4. Staff in supervisory positions shall have annual training in supervisory and management techniques.

D. Number and Qualifications of Staff

1. The provider shall delegate sufficient authority to qualified staff to ensure that the responsibilities the provider undertakes are carried out.

2. The provider shall not be dependent upon clients or volunteers for performing necessary services such as maintenance or client supervision.

3. Qualified direct care staff shall be employed and present with the clients as necessary to ensure the health, safety and well-being of clients. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the agency, and the ages and needs of the clients.

4. The client/staff ratio shall be one staff per eight clients unless client(s)' functional impairment require(s) additional staff coverage to meet the client(s)' needs.

5. The following staff positions are required; however, one person may occupy more than one position:

a. Director/Director Designee. The director (or director designee, if applicable) shall have a bachelor's degree plus one year's experience relative to the population being served.

b. Qualified Professional. A person with a bachelor's degree in the human services field and one year's experience in human services with the relevant type of client population.

c. Food Service Supervisor. The facility shall designate one staff member who shall be responsible for meal preparation/serving if meals are prepared in the facility.

d. Any staff hired after the effective date of publication shall meet requirements of that position.

E. Volunteers/Student Interns

1. A provider utilizing volunteers or student interns on a regular basis shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

- a. be directly supervised by a paid staff member;
- b. be oriented and trained in the philosophy and policy and procedures of the provider, confidentiality, the needs of clients, and methods of meeting those needs; and
- c. have documentation of three reference checks.

2. Volunteers/student interns shall be a supplement to the required staffing component.

F. External Professional Services

1. When a client's plan indicates the need for professional services that are not available from the provider, the provider shall facilitate access to such services and shall document such.

2. The provider shall have a written agreement with appropriately qualified professionals.

3. Current documentation of the professional's certification/licensure shall be kept on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4319. Direct Service Management

A. Admissions

1. The provider shall have a written description of the admission process and the criteria for admission.

2. The provider shall not refuse admission to any client on the grounds of race, color, religion, sex, age, national origin, handicap, political beliefs, or any other nonmerit factor. The provider shall not refuse admission on the grounds of age, except where funded by state or federal monies and the appropriate program office's eligibility criteria indicate age restrictions.

3. The provider shall not admit more clients into care than the number specified on the license.

4. The provider shall not admit any client into care whose presence would pose a documented health and safety risk to the client or to other clients and for whom the provider cannot provide the necessary care.

5. The provider shall determine the legal status of applicants, as well as any changes in such status of applicants or current clients (e.g., full interdiction, partial interdiction, continuing tutorship, competent major).

In the event that a restrictive legal action has been filed on behalf of an applicant or current client, the responsible individual shall be informed of the need to provide a copy of the legal document, or affidavit to that effect, to the provider.

6. There shall be a written orientation program for clients admitted to the program which shall include the following:

- a. the responsibilities of the organization;
- b. wage payment practices;
- c. work program rules;
- d. nondiscrimination provisions;
- e. client rights and responsibilities;
- f. grievance and appeal procedures for clients; and
- g. the availability of community-based job training and placement services;

h. The client and staff shall sign and date a statement verifying the client received an explanation of information covered in §4319.A.6.a-g.

B. Individual Service Plans

1. Within 30 days of admission, an individualized plan shall be developed by a team composed of the following:

- a. the client, and when appropriate, legally responsible person(s);
- b. any representative the client may select, if the representative agrees;
- c. a qualified professional;
- d. the staff person(s) involved in the client's program;
- e. other professionals deemed appropriate by the team.

2. Prior to the development of the initial individualized plan, the following evaluations shall be on file and shall be current (not over a year old):

- a. social history;
- b. vocational profile;
- c. psychological or psychiatric;
- d. medical; and
- e. any other evaluations that may be recommended by the team.

NOTE: Omission of a specific evaluation may be made in certain instances, provided the state referring agency documents that the information is not necessary to develop a valid service plan.

3. Individualized plans shall be reviewed and updated at least annually and more often, if needed, by the team as defined in §4319-B.1.a-e.

4. Individualized plans shall include, at a minimum, the following:

- a. a list of the client's interests, preferences, and goals;
- b. a list of the client's general and specific abilities, based on observations, interviews and other techniques;
- c. a statement of the client's strengths and needs; and
- d. measurable, functional outcomes based on the results of required evaluations and §4319.B.4.a-c.

5. For each measurable, functional outcome the plan shall include:

- a. methods for achieving the outcome;
- b. persons responsible for implementing the plan;
- c. projected time frames for completion; and
- d. procedures for evaluation of progress.

6. The individualized plan shall be made available to staff person(s) who work with the client.

7. A quarterly summary, approved by a qualified professional, shall include successes and failures of the client's program, and shall address each functional outcome and any recommendations for modification. This shall be located in the client's file.

C. Work

1. The provider shall meet all state and federal wage and hour regulations regarding employment of persons admitted to the agency.

a. The provider must maintain full financial records of clients' earnings if the agency pays the client.

b. The provider shall have written assurance that the conditions and compensation of work are in compliance with applicable state and federal wage and hour laws.

2. Clients shall not be required to perform any kind of work involving operation and maintenance of the facility without compensation.

3. Clients shall be directly supervised when operating any type of power driven equipment such as lawn mowers or electric saws, unless the team has determined that direct supervision is not necessary and the equipment has safety guards or devices and adequate training is given to the client and the training is documented.

4. Clients shall be provided with the necessary safety apparel and safety devices.

D. Abuse and Neglect. The provider shall have a comprehensive, written procedure concerning client abuse which includes, but is not limited to, the following:

1. current definitions of abuse and neglect, reporting requirements, and applicable laws;

2. provisions ensuring that regulations for reporting critical incidents involving abuse and neglect are followed;

3. provisions ensuring the administrator/director completes an investigation report within 10 working days;

4. provisions ensuring the client is protected from potential harassment during the investigation;

5. provisions for disciplining staff members who abuse or neglect clients.

E. Incident Reports

1. The provider shall have written procedures for the reporting and documentation of deaths of clients, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of a client(s).

Such procedures shall ensure timely verbal reporting to the administrator/director and a preliminary written report within 24 hours of the incident.

There shall be documentation that the director or designee reviewed the written report within 24 hours.

2. When an incident occurs, a detailed report of the incident shall be completed. As a minimum, the incident report shall contain the following:

- a. circumstances under which the incident occurred;
- b. date and time the incident occurred;
- c. location where the incident occurred;
- d. immediate treatment and follow-up care;
- e. names and addresses of witnesses;
- f. date and time the legally responsible person was notified, if applicable;

g. symptoms of pain and injury discussed with the physician, if applicable;

h. signatures and dates of the staff completing the report and the administrator/director.

3. When an incident results in death of a client, involves abuse or neglect of a client, or entails any serious threat to the client's health, safety, or well-being the provider shall:

a. immediately report verbally to the administrator/director and submit a preliminary written report within 24 hours of the incident;

There shall be documentation that the director or designee reviewed the report within 24 hours.

b. immediately notify the Bureau of Licensing and other appropriate authorities, according to state law (e.g., DHH Adult Protection Services, Office of Elderly Affairs, and law enforcement authority). The provider must notify the above agencies, in writing, within 24 hours of the suspected incident;

c. immediately notify the next of kin or legally responsible person, with written notification to follow within 24 hours;

d. provide follow-up written reports to all the above persons and agencies;

e. take appropriate corrective action to prevent future incidents.

4. Copies of all critical incident reports shall be kept as part of the clients' record, and a separate copy shall be kept in the administrative file of the provider, along with documentation of compliance with procedures required in §4319.E.3.

F. Behavior Management

1. The provider shall have written policies and procedures for behavior management which:

a. prohibit corporal punishment; chemical restraints; psychological abuse; verbal abuse; seclusion; forced exercise; mechanical restraints; any procedure which denies food, drink, or use of rest room facilities; and any cruel, severe, unusual, or unnecessary punishment;

b. ensure that nonintrusive, positive approaches to address the meaning/origin of behaviors are used prior to the development of a restrictive plan;

c. define the use of behavior modification programs, define mechanisms which authorize their use, and provide for the monitoring and control of their use;

d. indicate that passive/physical restraint may be used only after other, less restrictive interventions/strategies have failed; shall be implemented only by trained staff; and shall be of short duration;

e. cover any behavioral emergency and provide documentation of the event in incident report format.

2. Any behavior management plan for an individual must be developed or approved by a licensed psychologist or psychiatrist.

G. Discharge

1. There shall be a written discharge policy and procedure. This policy shall ensure that emergency discharges initiated by the provider shall occur only when the health and safety of a client or other clients might be endangered by the client's further stay at the facility.

2. A summary shall be written at the time of discharge and shall include:

a. the name and address of the client and, where appropriate, the legally responsible person;

b. dates of admission and discharge;

c. reason for discharge and details of the circumstances leading to the discharge;

d. a summary of accomplishments while at the facility;

e. a summary of services provided during care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4321. Food and Nutrition

A. If meals are prepared by the facility or contracted from an outside source:

1. menus shall be written in advance and shall provide for a variety of foods;

2. records of menus, as served, shall be filed and maintained for at least 30 days;

3. modified diets shall be prescribed by a physician;

4. if there are modified diets, a registered dietician shall review all the orders for special diets and plan the diets;

5. only food and drink of safe quality shall be purchased, and storage, preparation, and serving techniques shall be provided to ensure nutrients are retained and spoilage is prevented;

6. food preparation areas and utensils shall be kept clean.

B. When meals are not provided by the facility:

1. provisions must be made for obtaining food for clients who do not bring their lunch;

2. there shall be an adequate area for eating.

C. Drinking water shall be readily available. If a drinking fountain is not available, single-use disposable cups shall be used.

D. The dining areas shall be adequately equipped with tables, chairs, eating utensils, and dishes designed to meet the functional needs of all clients.

E. Adequate refrigeration for food shall be maintained, and refrigerators shall be kept at 45°F, or below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4323. Transportation

A. The provider shall have means of transporting clients in cases of emergency.

B. If transportation is provided, the provider shall ensure that the client is provided with the transportation necessary for implementing the client's service plan.

C. Any vehicle used in transporting clients in care of the provider, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, shall be properly licensed and inspected, in accordance with state law.

D. The provider shall have documentation of liability insurance coverage for all owned and nonowned vehicles used to transport clients. Employees' personal liability insurance shall not be substituted for required coverage.

E. Any staff member of the provider, or other person acting on behalf of the provider, operating a vehicle for the purpose of transporting clients, shall be properly licensed to operate that class of vehicle, according to state law.

F. The provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats in the vehicle.

G. All vehicles used for the transportation of clients shall be maintained in a safe condition and be in conformity with all applicable motor vehicle laws. The provider shall document that all vehicles, whether provider or employee owned, have a current license and inspection.

H. The provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation. The provider shall communicate such information to the operator of any vehicle transporting clients in care.

I. The following additional arrangements are required for providers serving handicapped, nonambulatory clients:

1. A ramp device to permit entry and exit of a client from the vehicle shall be provided for vehicles, except automobiles, normally used to transport persons with disabilities. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. In all vehicles, except automobiles, wheelchairs used in transit shall be securely fastened to the vehicle.

3. In all vehicles, except automobiles, the arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4325. General Safety Practices

A. A facility shall not maintain any firearms or chemical weapons at any time.

B. A facility shall ensure that all poisonous, toxic, and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff, and visitors.

C. Adequate supervision/training shall be provided where potentially harmful materials, such as cleaning solvents and detergents, are used.

D. A facility shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

E. If the provider holds medication for clients, it shall be locked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4327. Emergency and Safety

A. A provider shall have a written overall plan of emergency and safety procedures.

1. The plan shall provide for the evacuation of clients to safe or sheltered areas.

2. The plan shall include provisions for training staff and clients in preventing, reporting, and responding to fires and other emergencies.

3. The plan shall provide means for an ongoing safety program, including continuous inspection of the center for possible hazards, continuous monitoring of safety equipment, and investigation of all accidents or emergencies.

4. The plan shall include provisions for training personnel in their emergency duties and in the use of any fire fighting or other emergency equipment in their immediate work areas.

B. The facility shall conduct fire drills once every month, with documentation including:

1. date of drill;
2. time of drill;
3. lapse time of drill;
4. number of staff and clients participating;
5. any problems and corrective actions taken; and
6. signature of person responsible for conducting the drill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

§4329. Physical Environment

A. The building shall be constructed, equipped, and maintained to ensure the safety of all concerned.

The building shall be maintained in good repair and kept free of hazards, such as those created by any damaged or defective parts of the building.

B. The provider shall maintain all areas of the facility that are accessible to clients and ensure that all structures on the grounds of the facility are in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall be accessible to and functional for those cared for, the staff, and the public. All necessary accommodations shall be made to meet the needs of persons with disabilities.

Training or supports are provided to help clients effectively negotiate their environment.

D. There shall be a minimum of 35 square feet of space per client. Kitchens, bathrooms, halls used as passageways, and other spaces not directly associated with program activities shall not be considered as floor space available for clients.

E. There shall be storage space, as needed by the program, for training and vocational materials, office supplies, etc.

F. Rooms used for client activities shall be well ventilated and lighted.

G. There shall be separate space for storage of clients' personal belongings.

H. Chairs and tables shall be adequate in number to serve the clients.

I. Bathrooms and lavatories shall be accessible, operable, and equipped with soap, paper towels or hand drying machines, and tissue.

J. Individuals shall be provided privacy when using bathroom facilities.

K. Every bathroom door shall be designed to permit opening of the locked door from the outside, in an emergency, and the opening device shall be readily accessible to the staff.

L. Stairways shall be kept free of obstruction, and fire exit doors shall be maintained in working order. All stairways shall be equipped with handrails.

M. There shall be a telephone available and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 23:

Interested persons may submit written comments on this proposed rule to Steve Phillips, Office of the Secretary, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing within 30 days after publication. The deadline date for receipt of all comments is October 20, 1997 at 4:30 p.m.

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Adult Day Care**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated implementation costs to state government associated with this proposed rule will be the cost of printing of the changes to the licensing standards, announcing the change, and the cost of printing approximately 300 copies of the Adult Day Care Center Licensing Manual to incorporate the change into existing policy. The projected estimated cost of the printing is \$900, including postage to mail copies to licensed adult day care providers.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no anticipated costs or economic benefit to any persons or nongovernmental unit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition or employment.

William M. Hightower
Deputy Secretary
9709#086

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Administrative Policy—Retirees with Medicare

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby gives notice of intent to amend its administrative policy relative to premiums for retirees with Medicare.

The board finds that it is necessary to amend its administrative policy to provide that, for those employees who retire on or after July 1, 1997, the reduced premium rate for retirees with Medicare will be applied only to those who are enrolled for Medicare Parts A and B. Accordingly, the board intends to amend the administrative policy of the State Employees Group Benefits Program to provide as follows:

Administrative Policy—Reduced Premium Rates for Retirees with Medicare

For all employees who retire on or after July 1, 1997, the reduced premium rate for retirees with Medicare will be applied only with respect to those persons who are enrolled for Medicare Parts A and B.

Interested persons may present their views, in writing, to James R. Plaisance, Executive Director, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, October 24, 1997.

James R. Plaisance
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Administrative Policy—Retirees with Medicare**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no implementation costs to state or local governmental units as a result of this proposed rule change.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state or local governmental units will not be affected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule change is being made at the direction of the Board of Trustees of the State Employees Group Benefits Program. The board finds it necessary to amend its administrative policy to provide that, for those employees who retire on or after July 1, 1997, the reduced premium rate for retirees with Medicare will be applied only to those who are enrolled for Medicare Parts A and B.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

James R. Plaisance
Executive Director
9709#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Plan Document—Catastrophic Illness

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby gives notice of intent to amend the Plan Document of Benefits.

The board finds that it is necessary to amend provisions of the Plan Document relative to the Catastrophic Illness Endorsement to provide for annual restoration of benefits. Accordingly, the board intends to amend the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars:

Amend the Catastrophic Illness Endorsement provision in the Schedule of Benefits on page 6 of the Plan Document to read as follows:

Catastrophic Illness Endorsement (Optional)

All eligible expenses are payable at 100 percent following diagnosis of any covered disease.

Maximums for any one disease or combination thereof per lifetime:

Option 1—\$10,000 Maximum

Automatic Annual Restoration, up to \$1,000

Option 2— \$5,000 Maximum

Automatic Annual Restoration, up to \$500

Amend Article 3, Section VI, by adding a new Subsection, designated as Subsection G, to read as follows:

G. Restoration of Catastrophic Illness Endorsement Benefits. On and after January 1, 1997, Catastrophic Illness Endorsement benefits shall be restored by the Plan each January 1, up to the maximum amount of the annual restoration as stated in the Schedule of Benefits, provided that such restoration will not increase the lifetime maximum Catastrophic Illness Endorsement benefits above those provided in the Schedule of Benefits.

Interested persons may present their views, in writing, to James R. Plaisance, Executive Director, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, October 24, 1997.

James R. Plaisance
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Plan Document—Catastrophic Illness

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no implementation costs to state or local governmental units as this benefit modification is being made to the current Catastrophic Illness Endorsement of the current health plan. This endorsement is based on 100 percent employee contributions with no state or local participation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state or local governmental units will not be affected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This benefits modification will result in a true increase in the amount of benefits paid under CIE of approximately \$27,000 in the first 12-month period following the enactment of this change. Current rates charged for CIE should be sufficient to fund these benefit changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

James R. Plaisance
Executive Director
9709#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Plan Document—Point of Service PPO Regions

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby gives notice of intent to amend the Plan Document of Benefits.

The board finds that it is necessary to amend provisions of the Plan Document relative to point of service regions for Preferred Provider Organizations (PPOs) to coincide with Health Maintenance Organization (HMO) service areas. Accordingly, the board intends to amend the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars: Amend Article 3, Section X, Subsection B, Paragraph 1, to read as follows:

B. Point of Service PPO Regions (Areas)

1. The following regions, designated by United States Postal Service ZIP codes, are used to determine whether there is a PPO provider in the same area as the point of service:

- Region 1 Zip Codes 70000 through 70199
- Region 2 Zip Codes 70300 through 70399
- Region 3 Zip Codes 70400 through 70499
- Region 4 Zip Codes 70500 through 70599
- Region 5 Zip Codes 70600 through 70699
- Region 6 Zip Codes 70700 through 70899
- Region 7 Zip Codes 71300 through 71499
- Region 8 Zip Codes 71000 through 71199
- Region 9 Zip Codes 71200 through 71299

Interested persons may present their views, in writing, to James R. Plaisance, Executive Director, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, October 24, 1997.

James R. Plaisance
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Plan Document—Point of Service PPO
Regions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs to state or local governmental units associated with this proposed rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Revenue collections of state or local governmental units will not be affected.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This proposed rule change is being made at the direction of the board of trustees to amend provisions of the Plan Document relative to point of service regions for Preferred Provider Organizations (PPO) to coincide with the Health Maintenance Organization (HMO) service areas.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Competition and employment will not be affected.

James R. Plaisance
Executive Director
9709#060

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Plan Document—Prescription Drug

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby gives notice of intent to amend the Plan Document of Benefits.

The board finds that it is necessary to amend provisions of the Plan Document relative to prescription drug benefits to provide a minimum co-payment of \$12 for brand name drugs. Accordingly, the board intends to amend the Plan Document of Benefits for the State Employees Group Benefits Program in the following particulars:

Amend the Prescription Drug provision under "Percentage Payable after Satisfaction of Applicable Deductibles" in the Schedule of Benefits on page 5 of the Plan Document, to read as follows:

Prescription Drugs (subject to a minimum co-payment of \$3 per prescription for generic drugs, and \$12 per prescription for brand name drugs, not to exceed the maximum allowable charges):

- 90 percent Network;
- 50 percent nonNetwork, in state;
- 80 percent nonNetwork, out of state.

* * *

Amend Article 3, Section XI, Subsections A and D to read as follows:

XI. Prescription Drug Benefits

* * *

A. Upon presentation of the Group Benefits Program identification card at a network pharmacy, the plan member shall be responsible for payment of 10 percent of eligible charges for the drug, with a minimum co-payment of \$3 per prescription when a generic drug is dispensed and \$12 per prescription when a brand name drug is dispensed, provided, however, that in no event will a combination of payments made by the prescription benefits management firm and the plan member exceed the actual charge by the pharmacy for the drug.

* * *

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

* * *

Interested persons may present their views, in writing, to James R. Plaisance, Executive Director, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, October 24, 1997.

James R. Plaisance
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Plan Document—Prescription Drug

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be a \$7.2 million savings to the State Employees Group Benefits Program. This savings will be a result of increased co-payments for name brand drugs and reduced drug cost for generic substitutes.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is hoped this benefit modification will reduce the impact of any future rate increases that may be necessary.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The cost of this rule change will be to those plan members who choose to receive name brand prescription drugs instead of a generic substitute. Their minimum co-payment for name brand will be an increase from \$3 per RX drug to \$12 per RX drug. The savings will result from increased plan member co-payment for name brand drugs and for reduced drug costs for those plan members who will now choose generic substitutes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

James R. Plaisance
Executive Director
9709#061

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Plan Document—Sleep Disorders

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board hereby gives notice of intent to amend the Plan Document of Benefits.

The board finds that it is necessary to amend the Plan Document to limit benefits for the treatment of sleep disorders.

The full text of this proposed rule may be found in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may present their views, in writing, to James R. Plaisance, Executive Director, State Employees Group Benefits Program, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on Friday, October 24, 1997.

James R. Plaisance
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Plan Document—Sleep Disorders

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no implementation costs to state or local governmental units as this rule change is being made to bring our plan document in line with what is already being done.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Revenue collections of state or local governmental units will not be affected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule is being made at the direction of the Board of Trustees to clarify plan document provisions related to the exclusion of benefits for sleep disorders.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

James R. Plaisance
Executive Director
9709#059

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the State
Employees' Retirement System**

Emergency Refunds (LAC 58:I.1301 and 1305)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System (LASERS) advertises its intent to amend rules revising LAC Title 58, Part I, Chapter 13. The proposed rules set forth the procedures for the emergency refund of employee contributions.

These proposed rules comply with statutory law administered by LASERS and are enabled by R.S. 11:515.

No preamble regarding these proposed rules is available.

Title 58

RETIREMENT

**Part I. Louisiana State Employees'
Retirement System (LASERS)**

Chapter 13. Emergency Refunds

§1301. Conditions Giving Rise to an Emergency Refund

A. A refund of accumulated employee contributions may be made in less than 30 calendar days after the date of separation from state service in the following situations:

1. the refund results from the death of the member; or
2. the member has significant expenses for medical care for himself, spouse, or child; or
3. an emergency situation of the member, which shall consist of the foreclosure on a member's domicile, repossession of the member's vehicle, or eviction of the member from his or her apartment.

B. The member shall provide a written request detailing the emergency situation and the executive director shall approve or disapprove the request based on this written request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:537(B).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 21:373 (May 1996), amended LR 23:

§1305. Responsibility for Overpayment of a Refund

If the amount that is refunded is greater than the amount actually due the individual, the agency paying the contributions shall be responsible for recouping any overpayment from the individual who was overpaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and 11:537(B).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 23:

Interested persons may submit written opinions, suggestions or data to Steve Stark, State Employees' Retirement System, 8401 United Plaza Boulevard, First Floor, Baton Rouge, LA 70809 through November 5, 1997.

James O. Wood
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Emergency Refunds**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant costs or savings to state or local governmental units are anticipated to result from the proposed rules. The proposed rules specify what type of emergency qualifies for an

emergency refund of employee contributions to members of the Louisiana State Employees' Retirement System. The proposed rules also allow LASERS to recoup erroneous overpayments from the agencies forwarding contributions to the system. The Louisiana State Employees' Retirement System may achieve some savings as a result of a reduction in administrative workload.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Governmental units who have members in the Louisiana State Employees' Retirement System shall bear the costs of errors they make in reporting contributions to LASERS when such errors result in the overpayment of a refund as a result from implementation of the proposed rules.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No costs or economic benefits to directly affected persons are anticipated to result from the proposed rule implementation.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule changes will not affect competition and employment.

James O. Wood
Executive Director
9709#081

Richard W. England
Assistant to the
Legislative Fiscal Officer

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 8-9, 1997, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows:

New Candidates: September 12, 1997

Re-Take Candidates: September 26, 1997

Reciprocity Candidates: November 14, 1997

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, phone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify the office prior to September 12, 1997. Questions may be directed to (504) 925-7772.

Bob Odom
Commissioner

9709#008

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Florist Exam

The next retail floristry examination will be given October 20-24, 1997, at 9:30 a.m. at the Lomax Hall, Louisiana Tech Campus, Ruston, LA. The deadline for sending in application and fee is September 22, 1997. No applications will be accepted after September 22, 1997.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, phone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify our office prior to September 22, 1997. Questions may be directed to (504) 925-7772.

Bob Odom
Commissioner

9709#009

POTPOURRI

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

Part 70 Compliance Certifications and Semiannual Reporting

A potpourri notice published in the April 20, 1997 *Louisiana Register*, Volume 23, Number 4, clarified reporting schedules and requirements under LAC 33:III.507.H.1 and 5 for initial semiannual reports and annual compliance certifications by Part 70 sources. This notice reduces the scope of the first annual compliance certification and the first semiannual report from that previously described in the April 20, 1997 notice.

Specifically, the April 20 potpourri notice indicated that the first annual compliance certification should cover the entire calendar year in which the permit was issued (or general permit authorization granted), and that the first semiannual compliance report should cover the entire semiannual calendar period during which the permit was issued (or general permit authorization was granted). The notice further indicated that, for those requirements which did not apply over the entire reporting period, the certifications and reports should cover only the period during which requirements are effective.

DEQ is now revising the scope of the initial reports and certifications so that the reports and certifications need only address monitoring, record keeping, reporting, and compliance status of all federally-applicable requirements from the date of initial permit issuance forward to the end of the reporting or certification period. Part 70 sources need only certify compliance with applicable requirements from the date of permit issuance to the end of the calendar year, regardless of whether the requirement was effective prior to permit issuance. Similarly, the initial semiannual report need only cover the required monitoring, record keeping, and reporting from the date of permit issuance forward, regardless of whether the requirements applied prior to permit issuance.

The schedule for submittals is not being revised. In addition, this change for the Part 70 required reporting and certification does not obviate the source's obligation to file any other report or certification required by regulation, including periodic reports or certifications required by NSPS, NESHAP, or SIP regulations. All annual compliance certifications and semiannual reports should be submitted to the DEQ Headquarters Office, with a copy to the appropriate DEQ Regional Office. The original should be submitted to the Louisiana Department of Environmental Quality, Air Quality Engineering Support Program, Box 82135, Baton Rouge, LA 70884-2135. Questions may be directed to

Bennett Farrier, Engineering Support at (504) 765-0148, or to Bliss Higgins, Air Permits at (504) 765-0114.

Gus Von Bodungen, P.E.
Assistant Secretary

9709#041

POTPOURRI

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

**Revision to 15 Percent Rate of
Progress State Implementation Plan (SIP)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the Office of Air Quality and Radiation Protection will submit a revision to the EPA approved Rate of Progress State Implementation Plan (SIP). The SIP demonstrates the state's ability to reduce Volatile Organic Compounds (VOC) emissions in the serious ozone nonattainment area by 15 percent by 1996, as mandated by the 1990 Clean Air Act amendments.

The revision will provide for a schedule extension for installation of guide pole sliding cover gaskets on 33 external floating roof tanks at Exxon Company, U.S.A. DEQ and EPA reviews have determined that the delay in installation of these controls has no significant impact on the VOC reduction requirement in the SIP.

A copy of the SIP revision may be viewed from 8 a.m. to 4:30 p.m., Monday through Friday, at the DEQ Headquarters, Air Quality Division, 7290 Bluebonnet, Second Floor, Baton Rouge, LA; or at the Capital Regional Office, 5222 Summa Court, Baton Rouge, LA.

A public hearing will be held at 1:30 p.m. on October 30, 1997, in Room 326, Maynard Ketcham Building, 7290 Bluebonnet, Baton Rouge, LA.

Interested persons may attend and submit oral comments on the proposal. Any individual requesting special accommodations due to a disability should notify Pat Salvaggio at (504) 765-0915 or FAX (504) 765-0921.

All interested persons may submit written comments concerning the SIP revision no later than 4:30 p.m., November 6, 1997, to Pat Salvaggio, Department of

Environmental Quality, Air Quality Division, Box 82135, Baton Rouge, LA 70884-2135.

Gus Von Bodungen, P.E.
Assistant Secretary

9709#042

POTPOURRI

**Department of Labor
Office of Workers' Compensation**

Average Weekly Wage Rate

Pursuant to Act 583 of the Regular Session of the 1975 Louisiana Legislature, this state's average weekly wage upon which the maximum workers' compensation weekly benefit amount will be based, effective September 1, 1997, has been determined by the Department of Labor to be \$466.57.

Garey J. Forster
Secretary

9709#077

POTPOURRI

**Department of Labor
Office of Workers' Compensation**

Weekly Compensation Benefit Limits

Pursuant to R.S. 23:1202 and based on the statewide average weekly wage as determined by the Department of Labor, the following limits shall apply to weekly compensation benefits for claimants injured during the period September 1, 1997 through August 31, 1998.

Average Weekly Wage	Maximum Compensation	Minimum Compensation
\$466.57	\$350.00	\$93.00

Garey J. Forster
Secretary

9709#074

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¹formerly Aid to Families with Dependent Children (AFDC)

²formerly Job Opportunities and Basic Skills Training Program (JOBS)

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