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Executive Orders

EXECUTIVE ORDER 97-43

Community/Technical College and Adult Education Task Force

WHEREAS: the State of Louisiana recognizes the importance of having a flexible and responsive community/technical college and adult education system that is focused on providing an effective labor force adapted to the foreseeable needs of the businesses and industries in the state;

WHEREAS: the existing disparity between business needs and labor skills will broaden unless the community/technical college and adult education system and workforce development programs within the State of Louisiana adapt to the foreseeable and projected skilled labor and educational needs of the businesses and industries within the state;

WHEREAS: the State of Louisiana would benefit from an evaluation of its community/technical college and adult education system, which is currently governed by several different boards, to determine the ability of the system to effectively respond to Louisiana's future skilled labor needs and to determine whether operational and/or structural changes should be implemented to enable the state's skilled labor force to meet the foreseeable and projected needs of the state's businesses and industries; and

WHEREAS: the interests of the citizens of the State of Louisiana can be best served by the creation of a task force on community/technical college and adult education, composed of representatives of business, labor, education, the executive branch, and the legislature, that is focused on the evaluation of Louisiana's future workforce needs and recommending the strategies and structures that are necessary to strengthen Louisiana's community/technical college and adult education system so that the state will have a workforce that will be more competitive in global markets;

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 Community/Technical College and Adult Education Task Force (hereafter "task force") is established within the Executive Department, Office of the Governor.

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

A. analyzing the economic and demographic trends which affect the State of Louisiana, and evaluating the impact of these trends upon the economic competitiveness of the businesses and industries within the state and the ability of Louisiana's skilled labor force to meet the foreseeable and projected needs of those businesses and industries;

B. assessing the strengths and weaknesses of the State of Louisiana's community/technical college and adult

education system in order to develop strategies necessary for present and future businesses and industries within the state to have a skilled workforce that enables them to compete successfully in global markets;

C. examining the efforts of other states in responding to the economic and demographic conditions or challenges faced by the businesses and industries in those states which are similar to the conditions or challenges faced by the businesses and industries in Louisiana, particularly with regard to those states' community/technical college and adult education strategies;

D. identifying operational strategies and/or governance structures which would improve the performance of Louisiana's community/technical college and adult education system to enable it to better respond to the foreseeable and projected skilled labor needs of Louisiana's present and future businesses and industries; and

E. recommending legislation which would improve Louisiana's ability to respond to and meet the foreseeable and projected skilled labor needs of the state's present and future businesses and industries.

SECTION 3: The task force shall be composed of 28 members appointed by, and serving at, the pleasure of the Governor. The membership of the task force shall be selected as follows:

A. the chief of staff, Office of the Governor, or the chief of staff's designee;

B. the chairs of the Senate Committees on Labor and Industrial Relations and on Education, or the chairs' designees;

C. two additional members of the Senate to be nominated by the president of the Senate;

D. the chairs of the House Committees on Labor and Industrial Relations and on Education, or the chairs' designees;

E. two additional members of the House of Representatives to be nominated by the speaker of the House of Representatives;

F. the secretary of the Department of Labor, or the secretary's designee;

G. the secretary of the Department of Economic Development, or the secretary's designee;

H. the superintendent of Education, or the superintendent's designee;

I. the commissioner of Higher Education, or the commissioner's designee;

J. three members of the Board of Elementary and Secondary Education, or the members' designees;

K. three representatives of higher education;

L. two representatives of organized labor; and

M. seven representatives of business and industry.

SECTION 4: The Governor shall select the chair and vice-chair of the task force from its membership. The membership of the task force shall elect all other officers.

SECTION 5: The task force shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 6: Support staff for the task force and facilities for its meetings shall be provided by the Office of the Governor and outside sources as necessary.

SECTION 7: The task force shall submit to the Governor its report on the issues described in Section 2, no later than February 15, 1998.

SECTION 8: Task force 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 official, may receive reimbursement from the Office of the Governor or 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 with the task force in implementing the provisions of this Order.

SECTION 10: 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 24th day of October, 1997.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9711#072

EXECUTIVE ORDER MJF 97-44

State Employees Group Benefits Program Study Commission

WHEREAS: it is the responsibility of government, not only to provide a benefits program for its employees that includes a quality health insurance product, but also to periodically review and improve the governance, professional management, and accountability of that benefits program;

WHEREAS: to fulfill this duty, the State Employee Group Benefits Program (hereafter "SEGBP") was created to provide affordable health care to its members, who are the employees and retirees of the State of Louisiana;

WHEREAS: members of the SEGBP have raised a number of concerns regarding the implementation of the SEGBP health care program that should be heard in a public forum and then thoroughly reviewed, including premium increases, reductions in the number of available health care providers, and the manner in which claims are handled; and

WHEREAS: the interests of the members of the SEGBP can be best served by the creation of a commission, composed of members of the legislature, the executive branch, the SEGBP, and the health care community to study the issues raised by the SEGBP members and recommend appropriate solutions to resolve their concerns;

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

SECTION 1: The State Employees Group Benefits Program Study Commission (hereafter "commission") is created and established within the Executive Department, Office of the Governor.

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

A. analyzing the SEGBP program; examining options for affordable health care from a variety of health care providers; examining industry standards for acceptable claim handling practices; examining industry standards for the governance, professional management and structure of a state health care program; and examining the benefits packages, the options, and the cost structure of the health care programs of other states;

B. studying the feasibility of improving the SEGBP through privatization; by providing legislative contractual review and oversight; and/or through rules and/or legislation designed to ensure that the SEGBP provides quality and affordable services to its members; and

C. conducting public hearings to receive input from SEGBP members, stakeholders and others that are impacted or affected by the SEGBP.

SECTION 3: The commission shall submit a comprehensive written report to the Governor by February 1, 1998, which addresses the issues set forth in Section 2.

SECTION 4: The commission shall be composed of 29 members who shall be appointed by and serve at the pleasure of the Governor. The members shall be selected as follows:

A. the chief of staff, or the chief of staff's designee;

B. the commissioner of Administration, or the commissioner's designee;

C. the commissioner of Insurance, or the commissioner's designee;

D. the secretary of the Department of Health and Hospitals, or the secretary's designee;

E. the legislative auditor, or the legislative auditor's designee;

F. one director of human resources management from a state college or university;

G. three members of the Louisiana House of Representatives;

H. three members of the Louisiana Senate;

I. one retired state employee who is a member of the SEGBP;

J. one current state employee who is a member of the SEGBP;

- K. one current SEGBP board member;
- L. one representative of health insurance providers;
- M. one representative of health care providers;
- N. one representative of the Louisiana Managed Healthcare Association, nominated by the association;
- O. one health industry business representative;
- P. one private corporation human resource representative;
- Q. two physicians;
- R. one representative of the AFL-CIO; and
- S. six at-large members.

SECTION 5: The Governor shall appoint the chair from its membership. All other officers shall be elected by the commission.

SECTION 6: The commission shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 7: A simple majority of the members of the commission shall constitute a quorum for the transaction of business. All actions of the commission shall require a majority vote of the members of the commission.

SECTION 8: Commission members shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, commission 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 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 the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall remain in effect until March 31, 1998, or until amended, modified, terminated, or rescinded by the Governor.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 24th day of October, 1997.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9711#008

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Regional Initiatives Program (LAC 13:I:Chapter 70)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and the authority of R.S. 51:2341, the Department of Economic Development, Office of the Secretary hereby finds that emergency action is deemed necessary for the timely implementation of funding grants for economic development related to regional economic development marketing efforts under the provisions of the Regional Initiatives Program.

This emergency rule is effective November 10, 1997, and shall remain in effect for 120 days or until adoption of the rule, whichever occurs first.

Title 13

ECONOMIC DEVELOPMENT

Part I. Commerce and Industry

Subpart 3. Financial Incentives

Chapter 70. Regional Initiatives Program

§7001. Purpose

The purpose of the program is to stimulate regional economic development efforts by encouraging existing public and private organizations to combine financial and leadership resources to market their shared strengths to overcome their common deficits. The program serves to help create a "spirit of regional cooperation."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7003. Definitions

Applicant—the entity requesting financial assistance from DED under this program.

Award—grant funding approved under this program for eligible applicants.

Awardee—an applicant receiving an award under this program.

DED—Louisiana Department of Economic Development.

Operating Costs—ongoing administrative, salary and travel expenses of the organization(s) applying for program funds.

Program—the Regional Initiatives Program.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7005. General Principles

The following principles will direct the administration of the Regional Initiatives Program:

1. awards should be considered to be one time only funding to achieve a specific goal for a regional (multiparish) economic development organization or coalition of organizations;

2. grant proposals must delineate clearly what is proposed and what is to be achieved by the award;

3. awards are not for the purpose of replacing existing costs, creating new, additional organizations, paying salaries, construction of facilities or acquisition of equipment;

4. projects to be funded must augment the Louisiana Economic Development Council's plan and the objectives and strategies of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7007. Eligibility

An eligible applicant for the grant award can include, but is not limited to, one of the following:

1. an existing regional economic development organization;

2. local chambers of commerce;

3. local economic development organizations;

4. multiparish organizations funded by local governing authorities and the federal government with an agreement signed by parish heads of government authorizing the group to apply for funds under the Regional Initiatives Program;

5. consortium of local economic development organizations as evidenced by a written agreement to enter into a proposal for the purposes of the Regional Initiatives Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7009. Criteria

A. Preference will be given to projects that are regional (multiparish) in scope.

B. Projects must have a positive economic impact on at least an entire parish.

C. Preference will be given to projects that enhance, expand or are intended to foster cooperation among both public and private development entities on a regional basis.

D. Resolutions must be provided that the proposed project has the support of the parish government and the prevailing economic development organization(s), whether public or private.

E. Preference will be given to rural areas and to proposals from organizations not already receiving economic development funds from the state.

F. No DED award funds can be used to fund ongoing operating costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7011. Application Procedure

The applicant must submit an application on a form provided by DED which shall contain, but not be limited to, the following:

1. a narrative proposal (maximum of five pages) that states the objectives and details of the project, what is to be accomplished, the duration of the project, how the proposed project will have a positive economic impact on the parish or region and how the proposed effort will be continued beyond the funding requested;
2. quantifiable objectives and deliverables for the project and plans to measure the effectiveness of the project according to those objectives and deliverables;
3. a detailed budget for the project including sources of funds and letters of commitment from the funding sources as well as written commitment of the 25 percent match to be used for the project;
4. résumé(s) of consultants involved with the project;
5. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7013. Submission and Review Procedure

A. Applicants must submit their completed application and proposal to the secretary of DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and region;
2. determine whether the project's funding requirements are best met by the proposed award;
3. validate the information presented;
4. determine the overall feasibility of the applicant's plan.

B. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the secretary. If the secretary finds the application complies with the requirements of this program, he may approve the application for funding.

1. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

2. The secretary will issue a letter of commitment to the applicant within five working days of the application review and approval.

3. The final 25 percent of the award amount will not be paid until DED staff reviews the deliverables of the grant agreement to assure that all work has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

§7015. General Award Provisions

A. Award Agreement. A grant agreement will be executed between DED and the awardee. The agreement will specify

the performance objectives and deliverables expected of the awardee and the compliance requirements to be enforced in exchange for state assistance including, but not limited to, time lines for program completion.

B. Use of Funds

1. Any salary of the applicant related to the project is to be funded through the applicant's in-kind match.

2. Project costs ineligible for award funds include, but are not limited to:

- a. ongoing operating costs;
- b. furniture, fixtures, computers, transportation equipment, rolling stock or equipment.

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed 75 percent of the total project cost.

2. The applicant shall provide at least 25 percent of the total cost; 12½ percent of the total project cost may be in-kind. For the purposes of this program, in-kind is the use, as a match, of the awardee's own resources to accomplish the goals of the project being funded.

3. The secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

D. Conditions for Disbursement of Funds

1. Upon notification of the award by the secretary, the awardee can begin spending funds on the project.

2. Award funds will be available to the awardee upon execution of a grant agreement.

3. Award funds will not be available for disbursement until:

- a. DED receives signed commitments by the project's other financing sources (public and private);
- b. all other closing conditions specified in the award agreement have been satisfied.

E. Compliance Requirements

1. The awardee shall be required to submit progress reports, as specified in the award agreement, describing the progress toward the performance objectives specified in the award agreement.

2. In the event an awardee fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, to modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event an awardee knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

4. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 24:

Kevin P. Reilly
Secretary

9711#039

DECLARATION OF EMERGENCY

**Department of Economic Development
Office of the Secretary
Division of Economically Disadvantaged
Business Development**

Economically Disadvantaged Business
Development Program and Small Business
Bonding Program (LAC 19:II.Chapters 1 and 9)

In accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development hereby amends and enacts rules pertaining to direct bonding assistance for economically disadvantaged businesses. The secretary of the Department of Economic Development is exercising the emergency provision to publish these rules because of a recognized immediate need to provide small economically disadvantaged businesses with direct bonding assistance.

Without these emergency rules, the public welfare is likely to be harmed as a result of likely disruptions in the effective growth and development of the economically disadvantaged businesses. Such developmental disruption would result in lower market productivity, diminished job creation and increased risk of higher unemployment. These emergency rules are intended to mitigate the disruptions described above. These emergency rules are effective November 20, 1997, and will remain in effect for 120 days or until a final rule is promulgated, whichever occurs first.

Title 19

CORPORATIONS AND BUSINESS

**Part II. Economically Disadvantaged Business
Development Program**

Chapter 1. General Provisions

§105. Definitions

When used in these regulations, the following terms shall have meanings as set forth below:

* * *

Economically Disadvantaged Person—a citizen of the United States who has resided in Louisiana for at least one year and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

RFP—Request for Proposal.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1759.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:

§107. Eligibility Requirements for Certification

A. - B. ...

1. Citizenship. The person is a citizen of the United States.

2. Louisiana Residency. The person has resided in Louisiana for at least one year.

3. Net Worth. Each individual owner's personal net worth may not exceed \$150,000.

4. Income. Each individual owner must submit personal federal income tax returns for the past three years.

C. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1751, 1752, and 1754.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A.1. - 6.d. ...

7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:

§903. Direct Bonding Assistance

A. Direct Bonding Assistance. All certified economically disadvantaged construction businesses that have been accredited by the LCAI and all other certified economically disadvantaged businesses (nonconstruction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or \$200,000 on any single project. All obligations whether contractual or financial will require the approval of the undersecretary.

B. Application Process

1. Application for surety bond guarantee assistance including contractor or business underwriting data as prescribed by surety companies shall be submitted by agent to the manager of the Bonding Assistance Program (BAP) and surety coordinator.

2. Manager of BAP or designee will:

a. determine and document that business is eligible to participate in program;

b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;

c. determine worthiness of the project based on advice and input from surety coordinator and management construction/risk management company; and

d. make recommendation to executive director as required pertaining to specific project.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from and its rates approved by the Department of Insurance.

a. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/Letters of Credit (LC) to a participating surety where the administration finds any of the following:

- i. fraud or misrepresentation in any of the sureties business dealings, BAP-related or not;
- ii. imprudent underwriting standards;
- iii. excessive losses (as compared to other participating sureties);
- iv. failure of a surety to consent to BAP audit;
- v. evidence of discriminatory practices; and
- vi. consideration of other relevant factors.

b. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/LC to a participating surety where the Department of Economic Development finds that the surety has failed to adhere to prudent underwriting standards or other practices relative to those of other sureties participating in the BAP. Any surety which has been denied participation in the program may file an appeal, in writing, delivered by certified mail to the secretary of the Department of Economic Development, who will review the adverse action and will render the final decision for the department. Appeals must be received no later than 30 days from the issuance of the executive director's decision.

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract together. BAP will recommend a guarantee only to one surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§905. Calculation of Guarantee Fee Deduction

A. Upon the contractor obtaining the RFP or contract for which BAP is guaranteeing a bid, payment or performance bond, the surety shall pay BAP a portion of the bond fee paid by the contractor.

1. The surety shall pay BAP a bond guarantee fee not to exceed 2 percent of the bond guarantee or LC.

2. BAP will deem acceptable bond premium charges which are:

a. authorized by the state insurance department rules or by applicable statutes; and

b. a minimum bond premium regardless of the contract price, if this minimum charge does not exceed \$250 and has been authorized by the appropriate state insurance department.

B. BAP will not recommend approval of an application for a bond guarantee where the surety makes any charge above the standard premium for the bond, except where other services are performed for the contractor and the additional charge or fee is permitted by the appropriate state insurance department.

C. BAP will not approve placement or finder's fees, fees for the use or attempted use of influence in obtaining or trying to obtain a surety bond guarantee or any part thereof. Agents

and brokers shall be compensated by surety companies for their efforts through the commission system, based upon fees charged to the applicant contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§907. Management Construction/Risk Management Company

A. Surety shall require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;

2. job cost breakdown and bid preparation assistance;

3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;

4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;

5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

B. Management construction/risk management company engaged by contractor shall be pre-approved by BAP and surety. BAP shall not receive any portion of any fees paid to management construction/risk management company by contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§909. Underwriting a BAP Guaranteed Bond

A. In underwriting a BAP guaranteed bond, the surety is required to adhere to the surety industry's general principles and practices used in evaluating the credit and capacity; and is also required to adhere to those rules, principles, and practices as may be published from time to time by the BAP.

B. Once an application for a bond guarantee/LC is received from a contractor, a review will be conducted in order to determine whether the economically disadvantaged business is eligible for BAP's surety bond guarantee assistance. This review will focus on the presence of a requirement for surety bonds and other statutory requirements.

1. Bonds

a. There must be a specific contract amount in dollars or obligee estimate of the contract amount, in writing, on other than firm fixed price contracts.

b. There must be nothing in the contract or the proposed bond that would prevent the surety, at its election, from performing the contract rather than paying the penalty.

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and

performance bonds when the actual contract price exceeds the original bid and the higher amount. In such an instance, the surety would either issue the payment and performance bond without BAP's guarantee, or suffer default in fulfilling the bid bond, which should result in claims against the surety and surety's claim against BAP.

2. Types of Bond Guarantees. BAP guarantees will be limited to certain bid, performance, and payment bonds issued in connection with a contract. Generally bid, performance, and payment bonds listed in the Contract Bonds section, *Rate Manual of Fidelity, Forgery and Surety Bonds*, published by the Surety Association of America, will be eligible for a BAP guarantee. In addition, the BAP guarantee may be expressly extended, in writing, to an ancillary bond incidental to the contract and essential to its performance.

3. Ineligible Bond Situations and Exceptions

a. If the contracted work is already underway, no guarantee will be issued unless the executive director consents, in writing, to an exception.

b. While it should not be a common occurrence, and is in fact to be discouraged, applications for surety bonds may occasionally be submitted for consideration after a job is in process. In such cases, the surety must submit, as part of the application, the following additional information:

i. evidence from the contractor that the surety bond requirement was contained in the original job contract;

ii. adequate documentation as to why a surety bond was not previously secured and is now being required;

iii. certification by contractor: list of all suppliers indicating that they are paid up to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each;

iv. certification by obligee that the job has been satisfactorily completed to present status; and

v. certification from the architect or engineer that the job is in compliance with plans and specifications; and is satisfactory to the present.

c. There are prepared forms published by the American Institute of Architects (AIA), which may be used for the purposes listed above.

C. The surety must satisfy to BAP that there is reasonable expectation that the economically disadvantaged business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the economically disadvantaged business' experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§911. Guarantee

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted

on an individual project basis at the discretion of the Department of Economic Development.

B. Surety Bond Guarantee Agreement

1. Terms and Conditions

a. The *guarantee agreement* is made exclusively for the benefit of BAP and the surety; it does not confer any rights or benefits on any other party including any right of action against BAP by any person claiming under the bond. When problems occur on a contract substantive enough to involve the surety, the surety is authorized to take actions it deems necessary. Regardless of the extent or outcome of surety's involvement, the surety's services, including legal fees and other expenses, will be chargeable to the contractor unless otherwise settled.

b. Any agreement by BAP to guarantee a surety bond issued by a surety company shall contain the following terms and conditions:

i. the surety represents that the bond or bonds being issued are appropriate to the contract requiring them;

ii. the surety represents that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety for the type of bond or bonds involved;

iii. the surety affirms that without the BAP guarantee to surety, it will not issue the bond or bonds to the principal;

iv. the surety shall take all steps necessary to mitigate any loss resulting from principal's default;

v. the surety shall inform BAP of any suit or claim filed against it on any guaranteed bond within 30 days of surety's receipt of notice thereof. Unless BAP decides otherwise, and so notifies surety within 30 days of BAP's receipt of surety's notice, surety shall take charge of the suit for claim and compromise, settle or defend such suit or claim until so notified. BAP shall be bound by the surety's actions in such matters;

vi. the surety shall not join BAP as a third party in any lawsuit to which surety is a party unless BAP has denied liability in writing or BAP has consented to such joinder; and

vii. the surety shall pay BAP a portion of the bond premium in accordance with BAP rules.

c. When contractor successfully completes bonded job a status inquiry report is signed by appropriate parties and is forwarded to surety's collateral department. Surety shall release standby letter of credit within 90 days of receipt of status inquiry report.

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ration and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the executive director's exercise of

the foregoing authority may file an appeal with the secretary of the Department of Economic Development. The secretary will render the final decision.

2. **Reinsurance Agreement.** In all guarantee situations, BAP agrees to reimburse the participating surety up to the agreed-upon percentage of any and all losses incurred by virtue of default on a particular contract. The participating surety agrees to handle all claims, with recoveries being shared on a pro rata basis with BAP. This includes reinsurance agreements between the surety and any other licensed surety or reinsurance company. In other words, no indemnity agreement can be made to inure solely to the benefit of the surety to recover its exposure on any bond guarantee by BAP without BAP participating in its pro rata share.

3. **Default**

a. **Notice of Default.** Ordinarily, BAP first is notified by the surety that a particular contractor is in trouble. Where BAP receives information from other sources indicating a contractor is in trouble, the information is to be relayed to the surety for its information and appropriate action.

b. **Default Claims, Indemnity Pursuit, and Settlement**

i. The sole authority and responsibility in BAP for handling claims arising from a contractor's default on a surety bond guaranteed by the BAP shall remain with the executive director and undersecretary relative to BAP's guarantee. The executive director and undersecretary will process and negotiate all claim matters with surety company representatives.

ii. In those situations where BAP's share is \$500 or less, the surety shall notify the contractor, by letter, of its outstanding debt with no further active pursuit undertaken by the surety for which BAP would be requested to reimburse.

iii. In those situations where BAP's share is over \$500 through \$2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file. The surety shall strongly consider the use of a collection agency versus attorneys on all indemnity actions, if it appears feasible and economically beneficial.

iv. In those situations where BAP's share is over \$2,500, the surety shall pursue recovery through its normal method, assessing and comparing the estimated cost of recovery efforts with the probable monetary gain from the effort prior to exercising its rights under LC.

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP is credited with its respective apportionment of all recovery within 90 days of the recovery.

vi. At the culmination of subrogation and indemnity recovery efforts, the surety shall notify the obligor of the total amount outstanding. A copy of the notice sent to the contractor shall be promptly forwarded to the BAP. After recovery efforts have been exhausted, the surety and BAP will make final reconciliation on the defaulted case, and close the file on that particular contractor's project. Prior to closing the file, surety shall conduct a recapitulation of the account to

assure that BAP has been correctly credited with all funds recovered from any and all sources.

vii. Under the terms and conditions of the surety bond guarantee agreement, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety, not with the BAP. A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and which will result in closing the loss file. The surety must pay BAP its pro rata share of such settlement. BAP, immediately upon receipt of same, closes the file.

4. **Reinstatement.** A contractor's contractual relationship is with the surety company. Therefore, all matters pertaining to reinstatement must be arranged with and through the surety. BAP's contractual relationship is with the surety company only. Because of these relationships, BAP will neither negotiate nor discuss with a contractor amounts owed the surety by the contractor, or settlement thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§913. Audits

At all reasonable times, BAP or designee may audit the office of either a participating agency, its attorneys, or the contractor or subcontractor completing the contract, all documents, files, books, records and other material relevant to the surety bond guarantee commitments. Failure of a surety to consent to such an audit will be grounds for BAP to refuse to issue further surety guarantees until such time as the surety consents to such audit. However, when BAP has so refused to issue further guarantees the surety may appeal such action to the secretary of the Department of Economic Development. All appeals must be in writing and delivered by certified mail within 30 days of receiving the executive director's written issuance of notice that no further guarantees will be issued. Otherwise the executive director's decision becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

§915. Ancillary Authority

The executive director, with the approval of the undersecretary, will have the authority to commit funds and enter into agreements which are consistent with and further the goals of this program. This authority would include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1753.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:

Henry Stamper
Executive Director

9711#017

DECLARATION OF EMERGENCY

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

**Public Contracts—Closed Specifications
for Certain Products (LAC 34:III.901)**

In accordance with R.S. 49:953(B) and R.S. 38:2290(B), the Office of Facility Planning and Control adopts the following emergency rule governing the closing of specifications for products that are necessary to expand or extend existing systems but for which a person or group of persons possesses the right to exclusive distribution. This emergency rule is being adopted in direct compliance with Act 678 of the 1997 Regular Session.

Under current purchasing procedures, products for the systems listed in the rule must be purchased separately from the construction contract and turned over to the contractor for installation. This causes a risk of improper installation and reduces the contractor's responsibility for the proper functioning of the system. The emergency rule will make it possible to include the products in the construction contract and improve the quality of installation and obtain a single source of responsibility.

This emergency rule is effective upon publication in the *Louisiana Register* and remains in effect for 120 days or until a final rule takes effect through the normal rulemaking process, whichever occurs first.

Adoption of this rule on an emergency basis is necessary in order to proceed immediately with the bidding of currently funded and designed sprinkler system projects which are required by Act 422 to be completed prior to January 1999. These systems require monitoring equipment that will electronically match the monitoring equipment of the existing fire alarm systems and will benefit substantially from the adoption of this rule. To delay bidding of these projects until this rule is adopted through the normal rulemaking process would jeopardize the timely completion of this work.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 9. Public Contracts

§901. Closed Specifications for Certain Products

A. This rule applies to the closing of specifications to products that are necessary to expand or match products in existing systems but for which a person or group of persons possesses the right to exclusive distribution.

B. A closed specification may be submitted and authorized where a person or group of persons possesses the right to exclusive distribution of the specified product when that product is required to expand or extend an existing system at a facility or site if that product is one of the systems listed in §901.B.1-11, or a component of one of them, and the approving authority has determined that all products other than the one specified would detract from the utility of the

system; and all other applicable requirements of R.S. 38:2290-2296 have been met:

1. energy management systems;
2. chillers when necessary for refrigerant conversion;
3. fire alarm systems;
4. electronic security systems;
5. elevators;
6. nurse call systems;
7. medical gas systems;
8. stage lighting systems;
9. sound systems;
10. clock systems;
11. brick and stone.

C. It is the responsibility of the approving authority to verify that the product for which the specification is closed is the only acceptable product and to comply with all applicable requirements of R.S. 38:2290-2296.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953(B) and R.S. 38:2290(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 24:

Roger Magendie
Director

9711#035

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration
State Land Office**

Wax Lake Waterfowl Hunting Season—1997-1998

The Division of Administration, State Land Office has adopted the following emergency rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., which emergency rule is effective November 1, 1997 and remains in effect for 120 days.

Emergency adoption is necessary because of a dispute between the State of Louisiana and Miami Corporation over the ownership of water bottoms and accretion areas generally between the north end of Wax Lake and the mouth of Little Wax Bayou. Miami Corporation has previously granted hunting leases to various parties in this area; and the State previously posted signs in this area evidencing the State's claims, leading some members of the public to assume that the area was open to unlimited hunting and other access, including the right to construct permanent hunting blinds in the area. Problems exist with enforcement of trespass laws in that portion of the Wax Lake Area claimed by Miami Corporation and the State during duck hunting season; therefore, both Miami Corporation and the State are united in their efforts to avoid any confrontation among armed hunters in this area and deem it advisable to create a uniform set of rules for use of the area during the opening hunting season.

Emergency Rule

Effective November 1, 1997 and thereafter, the State Land Office adopts the following rules to govern use of the area of Wax Lake claimed by the State (which has been marked on the ground by State Land signs on perimeter trees) for hunting during the duration of the 1997-1998 waterfowl hunting season:

1. For purposes of these regulations, "Wax Lake Area" shall include lands and water bottoms within Sections 34, 35, 44, and 45, Township 16 South, Range 10 East, St. Mary Parish, said area generally lying between the north limit of Wax Lake and the mouth of Little Wax Bayou. The lands and water bottoms within the Wax Lake Area are subject to competing claims of the State and private landowners.

2. No one shall use marsh buggies within the Wax Lake Area. Air boats shall be allowed within the channel of Wax Lake Outlet only.

3. Certain improvements have been placed on the area by parties claiming through private landowners. Pending resolution of the title disputes between the State and those landowners, those improvements may remain in place, and any new permanent improvements shall be spaced a minimum of 500 feet from any existing or newly constructed improvements. All blinds, stands, or other improvements placed on the lands or water bottoms for use in hunting shall be removed upon termination of the legal hunting seasons. Other than such temporary hunting blinds as may be constructed for personal use, no party shall construct any buildings, levees, dams, fences, or other structures or facilities on the lands or water bottoms within the Wax Lake Area, nor dredge or dig any additional canals, ditches, or ponds thereon or otherwise change or alter the premises in any manner.

4. No member of the public is allowed to "stake a claim" to any particular location within areas owned or claimed by the State of Louisiana for any purpose. Construction of permanent blinds shall not give such party any right to exclude others.

Mark C. Drennen
Commissioner

9711#005

DECLARATION OF EMERGENCY

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

**Disproportionate Share
Hospital Payment Methodologies**

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., and pursuant to Title XIX of the Social Security Act. This emergency rule is promulgated 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.

Disproportionate Share Hospital (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), which amended §1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal legislation and to avoid a budget deficit in the medical assistance program, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under the methodology, public state-owned hospitals received DSH payments equal to 100 percent of the hospital's net uncompensated cost, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

Effective March 20, 1997, the department adopted an emergency rule pursuant to Act Number 17 (House Bill Number 1) of the 1996 Legislative Session that provided for separate treatment of disproportionate share funds for uncompensated cost in small (60 beds or less) nonstate-operated local government hospitals and small (60 beds or less) private rural hospitals.

The following emergency rule implements Act Number 1485 of the 1997 Legislative Session, which provides that all rural hospitals meeting the requirements of Act 1485 are to receive maximum disproportionate share funding in amounts appropriated by the legislation.

Failure to adopt this emergency rule on an emergency basis could result in unavailability of local hospital services for Medicaid recipients in areas served by these rural hospitals, and would cause imminent peril to the public health, safety, or welfare of affected Medicaid recipients. It is estimated that the federal expenditure will be \$13,760,140.

Emergency Rule

Effective November 3, 1997, the Department of Health and Hospitals, Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies and establishes the following regulations to govern the disproportionate share hospital payment methodologies:

I. General Provisions

A. Reimbursement will no longer be provided for indigent care as a separate payment to hospitals qualifying for disproportionate share payments.

B. Total cumulative disproportionate share payments under any and all DSH payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospitals' disproportionate share payments to remain within the federal disproportionate share allotment or the state disproportionate share appropriated amount.

C. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments

resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

D. DSH payments to a hospital other than a small rural or state hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year-end cost report ending during the previous state fiscal year ending. DSH payments to a small rural hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the hospital's fiscal year-end cost report ending during April 1 through March 31 of the previous year. DSH payments to a state hospital determined under any of the methodologies below shall not exceed the hospital's uncompensated cost for the state fiscal year to which the payment is applicable.

E. Qualification is based on the hospital's latest year-end cost report for the year ended during the period July 1 through June 30 of the previous year except that a small rural hospital's qualification is based on the hospital's year-end cost report for the year ending during the period April 1 through March 31 of the previous year. Only hospitals that return timely DSH qualification documentation will be considered for disproportionate share payments. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

F. Hospitals/units which close or withdraw from the Medicaid program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

G. *Net Uncompensated Cost* is defined as the cost of furnishing inpatient and outpatient hospital services net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients. It is mandatory that qualifying hospitals seek all third-party payments including Medicare, Medicaid and other third-party carriers. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments.

H. No additional payments shall be made if an increase in days is determined after audit. Recoupment of overpayment from reductions in pool days originally reported shall be redistributed to the hospital that has the largest number of inpatient days attributable to individuals entitled to benefits under the state plan of any hospitals in the state for the year in which the recoupment is applicable.

I. Disapproval of any payment methodology(ies) by the Health Care Financing Administration does not invalidate the remaining methodology(ies).

II. Qualifying Criteria for a Disproportionate Share Hospital

A. A hospital must have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligibles. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures; or

B. A hospital treats inpatients who are predominantly individuals under 18 years of age; or

C. A hospital did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

D. A hospital has a utilization rate in excess of either of the below specified minimum utilization rates:

1. *Medicaid Utilization Rate*—a fraction (expressed as a percentage), the numerator of which is the hospital's number of Medicaid (Title XIX) inpatient days and the denominator of which is the total number of the hospital's inpatient days for a cost-reporting period. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of the mean plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

2. *Low-Income Utilization Rate*—the sum of:
a. the fraction (expressed as a percentage), the numerator of which is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments, and the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period; and

b. the fraction (expressed as a percentage), the numerator of which is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in Section II.D.2.a in the period which are reasonably attributable to inpatient hospital services; and the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. The above numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations; or

3. effective November 3, 1997, be a small rural hospital as defined in Section III.B.

E. In addition to the qualification criteria outlined in Section II.A.-D, effective July 1, 1994, the qualifying disproportionate share hospital must also have a Medicaid inpatient utilization rate of at least 1 percent.

III. Reimbursement Methodologies

A. Public State-Operated Hospitals

1. A *public state-operated hospital* is a hospital that is owned or operated by the State of Louisiana.

2. DSH payments to individual public state-owned or operated hospitals are equal to 100 percent of the hospital's net uncompensated costs subject to the adjustment provision in Section III.A.3. Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

3. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH

appropriated amount, the department shall calculate a pro rata decrease for each public (state) hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH appropriated amount.

B. Small Rural Hospitals

1. A *small rural hospital* is a hospital (other than a long-term care hospital, rehabilitation hospital, or free-standing psychiatric hospital but including distinct part psychiatric units) meeting the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994, and:

(1) is located in a parish with a population of less than 50,000; or

(2) is located in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a).

2. Payment is based on uncompensated cost for qualifying small rural hospitals in the following two pools:

a. public (nonstate) *small rural hospitals* are small rural hospitals as defined above which are owned by a local government;

b. *private small rural hospitals* are small rural hospitals as defined above that are privately owned.

3. Payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the cost reporting period ended during the period April 1 through March 31 of the preceding year multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year.

4. A pro rata decrease necessitated by conditions specified in Section I.B for rural hospitals described in Section III will be calculated using the ratio determined by dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in this section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

C. All Other Hospitals (Private and Public Nonstate Rural Hospitals over 60 Beds, All Private Urban Hospitals, Free-Standing Psychiatric Hospitals, Exclusive of State Hospitals, Rehabilitation Hospitals, and Long-Term Care Hospitals)

1. Annualization of days for the purposes of the Medicaid days pools is not permitted. Payment is based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Amount will be obtained by DHH from a report of paid Medicaid days by service date.

2. Payment is based on Medicaid days provided by hospitals in the following two pools:

a. *acute care hospitals* are acute care, rehabilitation, and long-term care hospitals not described in Section III.B (excluding distinct part psychiatric units);

b. *psychiatric hospitals* are free-standing psychiatric hospitals and distinct part psychiatric units not included in Section III.B.

3. Disproportionate share payments for each pool shall be calculated based on the product of the ratio determined by dividing each qualifying hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified hospitals in the pool, and multiplying by an amount of funds for each respective pool to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days. Pool amounts shall be allocated based on the consideration of the volume of days in each pool or the average cost per day for hospitals in each pool.

4. A pro rata decrease necessitated by conditions specified in Section I.B for hospitals described in this Section will be calculated based on the ratio determined by dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in this Section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule. A copy of this emergency rule is available at the parish Medicaid offices for review by interested persons.

Bobby P. Jindal
Secretary

9711#007

DECLARATION OF EMERGENCY

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

Home and Community Based
Services—Elderly Home Care

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 shall be adopted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers four Home and Community Based Services Waiver Programs.

Participation in each home and community based services waiver is limited to a specific number of participants based on the approval of the waiver application by the Health Care Financing Administration. Home and community based services waiver programs are based on federal criteria which allow services to be provided in a home or community based setting for a recipient who would otherwise require institutional care. Costs for participants of the program must not exceed the costs for recipients of institutional care. Currently, daily costs in the Home Care for the Elderly waiver are exceeding the costs of comparable residents of nursing homes, thus jeopardizing the program. Therefore, in order to be able to continue this program the bureau is making changes in admissions criteria, the target population, management of services, and types of services available (*Louisiana Register*, Volume 23, Numbers 3 and 7).

This subsequent emergency rule continues the above provisions in force and is necessary to maintain federal financial participation for the Home Care for the Elderly waiver program and to preserve the health and welfare of individuals participating in this waiver program.

Emergency Rule

Effective November 27, 1997 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the Home Care for the Elderly waiver program to:

- 1) redefine the target population served by the waiver and rename the waiver;
- 2) establish an average cost per day limit each participant of the waiver;
- 3) establish and define new services;
- 4) establish methodology for the assignment of slots; and
- 5) clarify admission and discharge criteria, mandatory reporting requirements and the reimbursement requirement for the prior approval of the plan of care.

The total number of slots assigned shall not exceed the maximum number of slots approved by the Health Care Financing Administration. The assignment of vacated and previously unoccupied waiver slots; admission and discharge criteria; the array of services; calculation of waiver costs; mandatory reporting requirements and reimbursement for services provided prior to the approval of the plan of care shall be determined in accordance with the following guidelines.

Definition of Targeted Population for the Waiver

This home and community based services waiver is targeted at persons who qualify for admission to a nursing facility and are over age 65 or adults, age 21 or over, who are disabled according to Medicaid standards. It shall be called the Elderly and Disabled Adult waiver.

Guarantee of Waiver Costs

In order to assure the cost effectiveness of this entire home and community based services waiver each participant shall be limited to an array of services whose average cost per day shall not exceed a limit set by the bureau. This figure shall be set annually at a percentage of the average costs borne by the Medicaid program for the equivalent population receiving nursing facility services, with an allowance for temporary,

brief periods of excess costs in order to maintain a participant in the community. Case managers shall complete a budget analysis form as part of each care plan which shall list the types and number of services necessary to maintain the waiver participant safely in the community, the cost of those services and the average cost per day covered by the care plan.

Programmatic Allocation of Waiver Slots

The waiting list shall be used to protect the individual's right to be evaluated for waiver eligibility. Each waiver slot may be filled only once during each waiver year. When funding becomes available for a new waiver slot or a slot that has been vacated in the previous waiver year, staff of the Intake Offices at the local Councils on Aging shall notify the next individual in order of application on the waiting list in writing that a slot is available and that they are next in line to be evaluated for possible waiver slot assignment. A copy of the notification letter shall be forwarded to the Health Standards Section of BHSF. A case manager assists in the gathering of the documents needed for both the financial and medical certification eligibility process. If the individual is determined to be ineligible either financially or medically, that individual is notified in writing and a copy of the notice is forwarded to the Council on Aging office. The next person on the waiting list is notified as stated above and the process continues until an eligible person is encountered. A waiver slot is assigned to an individual when eligibility is established and the individual is certified.

Waiver Admission Criteria

Admission to this Waiver Program shall be determined in accordance with the following criteria.

1. initial and continued Medicaid eligibility as determined by the parish BHSF Office;
2. initial and continued eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;
3. the plan of care must provide justification that the waiver services are appropriate, cost effective and represent the least restrictive treatment alternative for the individual; and
4. assurance that the health and safety of the individual can be maintained in the community with the provision of reasonable amounts of waiver services as determined by the Health Standards Section of BHSF.

Waiver Discharge Criteria

Participants shall be discharged from this Waiver Program if one of the following criteria is met:

1. loss of Medicaid eligibility as determined by the parish BHSF Office;
2. loss of eligibility for a nursing facility level of care as determined by the Health Standards Section of BHSF;
3. incarceration or placement under the jurisdiction of penal authorities, or courts;
4. change of residence to another state with the intent to become a resident of that state;
5. admission to a nursing facility or any other long term care institutional setting;
6. the health and welfare of the waiver participant cannot be assured in the community through the provision of amounts of waiver services within the cost cap as determined

by the Health Standards Section of BHSF, i.e., the waiver participant presents a danger to himself or others;

7. failure to cooperate in either the eligibility determination process or the performance of the care plan; or

8. continuity of services is interrupted as a result of the participant not receiving waiver services during a period of 14 or more consecutive days. This does not include interruptions in services because of hospitalization.

Mandatory Reporting Requirements

Case managers and waiver service providers are obligated to report changes that could affect the waiver participant's eligibility, including but not limited to those changes cited in the discharge criteria, to either the parish BHSF Office or the Health Standards Section of BHSF within five working days. In addition, case managers and waiver service providers are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and well-being of the waiver participant and completing an incident report. The incident report shall be submitted to the Health Standards Section of BHSF within five working days of the incident.

Definition of Services

The following services will be made available to participants in this waiver by employees of Personal Attendant Provider agencies in half hour increments:

1. *Personal Care Attendant*—assistance with eating, bathing, dressing, personal hygiene, or activities of daily living.

2. *Household Supports*—services consisting of general household activities (meal preparation and routine household care) provided by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage the home and care for him or herself or others in the home.

3. *Personal Supervision (day)*—non-medical care, supervision and socialization, provided to a functionally impaired adult. Personal supervisors may assist or supervise the individual with such tasks as meal preparation, laundry and shopping, but do not perform these activities as discrete services as the household support worker does. The provision of this service does not entail hands-on nursing care.

4. *Personal Supervision (night)*—this type of supervision is to provide for the safety of individuals living alone who are limited in mobility or cognitive function to such an extent that they may not be able to preserve their own safety in dangerous situations.

Reimbursement of Waiver Services

Reimbursement shall not be made for waiver services provided prior to the BHSF approval of the care plan.

Bobby P. Jindal
Secretary

9711#043

DECLARATION OF EMERGENCY

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, 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, 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 emergency 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).

Effective August 1, 1997, the department adopted an emergency rule which altered 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 emergency rule did not otherwise alter the factors considered in setting rates or the calculations performed, nor did it affect criteria for participation, service quality expectations, or reporting requirements. The department now adopts a rule to continue the above provisions regarding the reimbursement methodology for hospital services including long-term acute hospitals under special and hospital peer groups.

Emergency Rule

Effective November 29, 1997 and after, 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.

Bobby P. Jindal
Secretary

9711#045

DECLARATION OF EMERGENCY

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 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 in accordance with the Administrative Procedure Act, R.S. 49:953(B) 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 decided 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. The department is adopting this subsequent emergency rule in order to continue the above provisions in force.

Emergency Rule

Effective November 30, 1997 and after, 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.** Averse 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.

3. 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.

Bobby P. Jindal
Secretary

9711#044

DECLARATION OF EMERGENCY

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

Substance Abuse Clinics

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing 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, and as directed by the 1997-98 General Appropriation Act.

This emergency rule shall be adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage for substance abuse clinic services under the Medicaid Program. In February 1996, the bureau adopted a rule to reimburse substance abuse clinics for only one service per day per recipient (*Louisiana Register*, Volume 22, Number 2). Thereafter, the bureau determined it was necessary to amend the February 1996 rule to:

1. establish a maximum service limit of 26 visits per year for recipients age 21 and older for individual and group counseling therapy;
2. limit the total number of persons in group counseling therapy to no more than six persons per group and reduce the reimbursement rate to \$10 per eligible recipient;
3. establish a maximum service limit of 12 visits per year, per eligible recipient for family counseling therapy for recipients age 21 and older; and
4. terminate coverage for collateral counseling services under the Medicaid Program. The bureau now finds it necessary to continue provisions of the above emergency rule in force.

Emergency Rule

Effective for dates of service November 29, 1997 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing revises the policy governing the provision of substance abuse clinic services under the Medicaid Program to:

1. establish a maximum service limit of 26 visits per year for recipients age 21 and older for individual and group counseling therapy;
2. limit the total number of persons in group counseling therapy to no more than six persons per group and reduce the reimbursement rate to \$10 per eligible recipient;
3. reduce the maximum service limit to 12 visits per year, per eligible recipient for family counseling therapy for recipients age 21 and older; and
4. terminate coverage for collateral counseling services under the Medicaid Program.

Bobby P. Jindal
Secretary

DECLARATION OF EMERGENCY

Department of Natural Resources
Office of Conservation

Fees (LAC 43:XIX.Chapter 8)

Pursuant to the power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Revised Statutes of 1950, Sections 21.B.(1)(a-c), (2)(a-c) and (3), as amended, and in conformity with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) and (2) and 954(B)(2), as amended, the following emergency rule and reasons therefor are now adopted and promulgated by the commissioner of Conservation as being necessary to protect the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally, by assuring continued operation of statutory functions of the Office of Conservation during Fiscal Year 1997-98 and beyond, including but not limited to, the regulation of oil and gas and other industries through the permitting and monitoring of such operations and activities within the regulatory jurisdiction of the Office of Conservation.

Because of increasing financial and budgetary difficulties being encountered by the state of Louisiana, including the Office of Conservation, and because such financial and budgetary difficulties would prohibit the Office of Conservation from continuing day-to-day operation of critical economic and environmental protection programs, it has been determined that there exists an imminent peril to the public health, safety and welfare of the people of the state of Louisiana, as well as the environment generally unless immediate funds are generated for use by the Office of Conservation. The alternative would be to allow the indiscriminate and unregulated production of oil, gas and other minerals, indiscriminate and unregulated generation and disposal of oil field waste, and the indiscriminate and unregulated underground injection of oil field waste, saltwater, and other wastes into the environment.

Confronted with the real, imminent peril of having the Office of Conservation in a posture of being unable to fulfill its statutory obligations, the commissioner of Conservation has undertaken a budgetary analysis and method of securing funds as provided in law to assure continued operation of the Office of Conservation during state Fiscal Year 1997-98 and beyond.

Protection of the public and our environment, therefore, requires the commissioner of Conservation to take immediate steps to assure continued operation of the Office of Conservation during Fiscal Year 1997-98 and beyond, and in so doing, requires the Office of Conservation to address the existing financial and budgetary problems. The emergency rule, Statewide Order No. 29-R set forth hereinafter, is now adopted by the Office of Conservation.

The effective date for this emergency rule is November 21, 1997 and remains effective for a period of not less than 120 days hereafter, or until the adoption of the final version of Statewide Order No. 29-R as noted herein, whichever occurs first.

9711#046

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 2. Statewide Order No. 29-R

Chapter 8. Fees

§801. Definitions

BOE—annual Barrels Oil Equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 8.

Capable Gas—natural and casinghead gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue.

Capable Oil—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue.

Class I Well—a Class I injection well used to inject hazardous, industrial, or municipal wastes into the subsurface, which falls within the regulatory purview of Statewide Order Nos. 29-N-1 or 29-N-2.

Class I Well Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class I wells in an amount not to exceed \$336,000 for Fiscal Year 1997-1998, and may increase by a sum not to exceed 3½ percent annually for Fiscal Years 1998-1999 and 1999-2000.

Class II Well—a Class II injection well which injects fluids which are brought to the surface in connection with conventional oil or natural gas production (Status 63), for annular disposal wells (Status 64), for enhanced recovery of oil or natural gas (Status 41, 42, 43), and for storage of hydrocarbons which are liquid at standard temperature and pressure (Status 44, 47). For purposes of administering the exemption provided in R.S. 30:21(B)(1)(c), such exemption is limited to operators who operate Status 63 wells serving a stripper oil well or an incapable gas well certified pursuant to R.S. 47:633 by the severance tax division of the Department of Revenue and located in the same field as such Class II well.

Class II Well Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on nonexempted Class II wells in an amount not to exceed \$493,000 for Fiscal Year 1997-1998, and may increase by a sum not to exceed 3½ percent annually for Fiscal Years 1998-1999 and 1999-2000.

Production Fee—an annual fee payable to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, by oil and gas operators on capable oil wells and capable gas wells based on a tiered system to establish parity between the producing wells. The tiered system shall be established annually by rule on annual volumes of capable oil and capable gas production in an amount not to exceed \$1,918,600 for Fiscal Year 1997-1998, and may increase by a sum not to exceed 3½ percent annually for Fiscal Years 1998-1999 and 1999-2000. Incapable oil, stripper oil, incapable gas well gas and incapable oil well gas shall be exempt from this fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§803. Fee Schedule for Fiscal Year 1997-1998

A. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers:

	Annual Production (Barrel Oil Equivalent)	Fee (\$ per well)
Tier 1	0	0
Tier 2	1—5,000	30
Tier 3	5,001—15,000	60
Tier 4	15,001—30,000	175
Tier 5	30,001—60,000	350
Tier 6	60,001—110,000	700
Tier 7	110,000—9,999,999	1300

B. Operators of record of Class I wells are required to pay \$8,000 per well.

C. Operators of record of nonexempt Class II wells are required to pay \$300 per well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§805. Failure to Comply

A. Operators of operations and activities defined in §801 are required to timely comply with this order. Failure to comply within 30 days past the due date of any required fee payment will subject the operator to civil penalties under the provisions of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as well as penalties provided in other sections of Title 30, including R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§807. Severability and Effective Date

A. The fees set forth in §803 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R, and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. To the extent the fees as provided in §803 may duplicate existing fees in LAC 43:XIX.201-207, this order shall supersede such existing fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

Summary

The emergency rule hereinabove adopted evidences the finding of the commissioner of Conservation that there is an

imminent risk to public health, safety and welfare, and that there is not time to provide adequate notice to interested parties. The commissioner of Conservation also finds it impractical to provide a public hearing regarding this emergency rule given the extreme urgency of the matter. However, the commissioner of Conservation notes again that a copy of the permanent Statewide Order No. 29-R will be sent out in the near future, with a public hearing to be held as per the requirements of the Administrative Procedure Act.

The commissioner of Conservation concludes that the above emergency rule will better serve the purposes of the Office of Conservation as set forth in Title 30 of the Revised Statutes, and is consistent with legislative intent. The adoption of the above emergency rule meets all the requirements provided by Title 49 of the Louisiana Revised Statutes. The adoption of the above emergency rule is not intended to affect any other provisions, rules, orders, or regulations of the Office of Conservation, except to the extent specifically provided in this emergency rule.

Within five days from date hereof, notice of the adoption of this emergency rule shall be given to all parties on the mailing list of the Office of Conservation by posting a copy of this emergency rule with reasons therefor to all such parties. This emergency rule with reasons therefor shall be published in full in the *Louisiana Register* as prescribed by law. Written notice has been given contemporaneously herewith notifying the governor of the state of Louisiana, the attorney general of the state of Louisiana, the speaker of the House of Representatives, the president of the Senate, and the Office of the State Register of the adoption of this emergency rule and reasons for adoption.

Warren A. Fleet
Commissioner

9711#018

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Juvenile Transfer to Adult Facility (LAC 22:I.335)

The Department of Public Safety and Corrections, Corrections Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) in order to implement the provisions of R.S. 15:902.1 and adopts the following emergency rule, effective November 6, 1997.

Emergency rulemaking is necessary as the backlog of juveniles pending assignment to secure state correctional facilities has reached crisis proportions. R.S. 15:902.1 authorizes the transfer of certain adjudicated juvenile delinquents to adult facilities and procedures have been developed to implement such transfers. Implementation of the provisions of the act allows for an immediate reduction in the backlog.

Emergency rulemaking is also necessary due to the fact that the time limit was such that the department could not

promulgate its final rule prior to the expiration date of the original emergency rule. In order for there to be no gap in the implementation of the transfer of juveniles to adult facilities, this additional emergency rule is imperative.

This emergency rule shall remain in effect for 120 days or until a final rule is promulgated, whichever occurs first.

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 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 offender shall be given 24-hour notice of the proposed transfer and shall be allowed to appear before the classification committee to provide input into the decision making process. He may select a staff representative to assist him in accordance with the process outlined in the "Disciplinary Rules and Procedures for Juvenile Offenders."

b. 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; and
- (c). minimize risk to other offenders.

c. 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 provide notification to the appropriate juvenile judge, Division of Youth Services office, the legal guardian, and the classification administrator at ARDC, and WRDC at least 72 hours prior to the proposed transfer (unless waived by the secretary or his designee).

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. Initial evaluation to determine appropriate housing while in the reception process should include evaluation of emotional and physical maturity.

6. 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; and
- g. consideration of geographical location.

7. Upon completion of evaluation, the Transfer Section at ARDC will schedule transfer to the appropriate permanent facility.

8. 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.

9. 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.

10. 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.

11. 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 §335.

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:

Richard L. Stalder
Secretary

9711#020

Rules

RULE

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

**Wood Destroying Insects
(LAC 7:XXV.107)**

Editor's Note: A portion of the following rules, which appeared on pages 854 through 856 of the July 20, 1997 *Louisiana Register*, is being republished to correct a codification error.

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.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§107. License to Engage in Structural Pest Control;

**Work Required: Qualifications of Applicant;
Requirements for Licensure; Phases of Structural
Pest Control License; Conditions of the License**

A. - H. ...

I. All applicants who are approved by the commission will, upon successfully completing the examination for licensure as set forth in §109 hereof, receive a single license to engage in structural pest control work, which license shall specify on the face thereof the specific phase or phases of structural pest control work for which the license is issued, as follows:

1. General Pest Control
2. Commercial Vertebrate Control
3. Termite Control
4. Structural Fumigation
5. Ship Fumigation
6. Commodity Fumigation
7. Wood Destroying Insect Report (WDIR) Inspector

J. - Q. ...

R. Persons licensed in termite control on or before September 30, 1997 shall attend a wood destroying insect report training session prior to being qualified to become a licensed WDIR inspector. Said training session must have prior approval by LDAF. Persons licensed on or after October 1, 1997 and persons licensed in termite control on or before September 30, 1997 who do not attend a wood destroying insect report training session, shall complete the requirements set forth in §107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15: 955 (November 1989), LR 19:1009 (August 1993), LR 23:855 (July 1997), repromulgated LR 23:1493 (November 1997).

Bob Odom
Commissioner

9711#074

RULE

**Department of Agriculture and Forestry
Office of Animal Health Services
Livestock Sanitary Board**

**Brucellosis and Pseudorabies Quarantining; Vaccinating
and Testing of Swine (LAC 7:XXI.905 and 907)**

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 provisions of the Administrative Procedure Act, the Department of Agriculture and Forestry, Livestock Sanitary Board amends rules and regulations governing the requirements for quarantining, vaccinating and testing of swine for brucellosis and pseudorabies in Louisiana.

These rules comply with and are enabled by R.S. 3:2093 et seq.

No preamble concerning the proposed rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 9. Swine

§905. Quarantining, Vaccinating and Testing Swine for Brucellosis and Pseudorabies

A. The state veterinarian or his representative shall have the authority to conduct epidemiologic investigations and quarantine of:

1. swine herds in which one or more of the animals are found to be positive to pseudorabies, as determined by the epidemiologist, based on the interpretation of official tests;
2. the herd of origin of swine that have been added to a herd that becomes quarantined because of pseudorabies, if swine have been acquired from said herd of origin within the last 12 months;
3. herds which have received swine from herds found to have pseudorabies;

B. Herds of swine including feedlots, within a 1.5-mile radius of the quarantined herd, will be monitored in accordance with the recommendation of the state veterinarian and/or epidemiologist by either a test of all breeding swine or by an official random sample test;

C. A herd plan and epidemiology report must be completed within 30 days from the date an animal that originated from the herd was found to be a reactor at slaughter. A herd test must be completed within 45 days from the date an animal that originated from the herd was found to be a reactor at slaughter.

D. To be eligible for release from quarantine, a swine herd must meet the following requirements:

1. All swine positive to an official pseudorabies test must be tagged with an official reactor tag in the left ear and permitted on Form VS 1-27 to recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws within 15 days. All swine, over 6 months of age and a random sampling of any growing/finishing swine which remain in the herd, must be tested negative 30 days or more after removal of reactors. No livestock on the premises shall have shown signs of pseudorabies after removal of reactors.

2. Whole Herd Depopulation. All swine on the premises must be tagged with an official reactor tag in the left ear and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

E. A herd of swine quarantined because of brucellosis must meet one of the following requirements:

1. All swine positive to an official brucellosis test must be tagged with an official reactor tag in the left ear and permitted on Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises by disposal means authorized by applicable state laws within 15 days.

a. All swine over 6 months of age which remain in the herd, must be tested according to an approved herd plan.

b. A herd may be released from quarantine upon completion of three negative Complete Herd Tests (CHT):

i. the first test must be completed at least 30 days after removal of the last reactor;

ii. a second CHT must be conducted 60-90 days following the first CHT;

iii. a third CHT is required 60-90 days following the second CHT.

iv. a fourth CHT is required six months after the third CHT.

2. Whole Herd Depopulation

a. All swine on the premises must be tagged with an official reactor tag in the left ear and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved"

location by disposal means authorized by applicable state laws.

b. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

F. All movement from pseudorabies/brucellosis quarantined herds, must be accompanied by a VS Form 1-27, Permit for Movement of Restricted Animals, listing the official, individual identification of each animal to be removed.

1. This form must be delivered to an authorized representative at destination.

2. These permits will be issued by a representative of the Livestock Sanitary Board.

G. All exposed swine moving from quarantined premises in interstate or intrastate commerce, must move directly to a recognized slaughter establishment or to an approved swine quarantined feedlot or rendering plant.

H. The use of pseudorabies vaccine is prohibited, except by permission of the state veterinarian.

I. All swine, 6 months of age or older, must be tested negative for pseudorabies and brucellosis by an official test within 30 days prior to sale. Swine originating from a brucellosis validated - pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 16:392 (May 1990), amended LR 18:839 (August 1992), LR 20:1258 (November 1994), LR 23:1493 (November 1997).

§907. Operation of Livestock Auction Markets

All swine which are sold or offered for sale in livestock auction markets must meet the general requirements of §111 and the following specific Pseudorabies/Brucellosis requirements:

1. All breeder and feeder swine moving to Louisiana auction markets from farms outside Louisiana must meet the requirements of §111.

2. All swine over 6 months of age, being sold at Louisiana livestock auction markets must be identified by an official swine back tag, placed on the animals' forehead and an official metal ear tag.

3. The market shall furnish the Livestock Sanitary Board's official representative a copy of each check-in slip, showing the name of the auction market, the date, the name and complete address of each consignor, and the official back tag numbers applied to the consignor's livestock. It shall be a violation of this regulation for anyone to consign livestock to a Louisiana livestock auction market and give a name and address that is not the name and address of the owner consigning the livestock to the auction market.

4. All swine 6 months of age or older arriving at a livestock auction market without an official negative test will have a blood sample drawn for testing. Swine originating from a brucellosis validated - pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement. Testing for pseudorabies and brucellosis

at livestock auction markets may be suspended by the state veterinarian due to climatic conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:245 (March 1985), amended LR 11:615 (June 1985), amended by the Department of Agriculture and Forestry, LR 16:392 (May 1990), LR 18:839 (August 1992), LR 23:1494 (November 1997).

Bob Odom
Commissioner

9711#016

RULE

Department of Economic Development Licensing Board for Contractors

License, Examination and Hearings
(LAC 46:XXIX.303, 503 and 703)

The Licensing Board for Contractors, under authority of the Contractors Licensing Law, R.S. 37:2150 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby amends LAC 46:XXIX, as follows, which provides a technical amendment to delete unnecessary language from the current rules, clarifies the intent of a current rule, and promulgates a new section to implement recently enacted legislation.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXIX. Contractors

Chapter 3. License

§303. Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 1:401 (September 1975), amended LR 3:11 (January 1977), LR 8:136 (March 1982), LR 12:761 (February 1986), repealed by the Department of Economic Development, Licensing Board for Contractors, LR 23:1495 (November 1997).

Chapter 5. Examination

§503. Authorized to Take Examination

The qualifying party or parties authorized to take the examination are:

1. any individual contractor, co-partner or any corporate officer who was an organizer in the articles of incorporation, provided no person shall be allowed to be the qualifying party for more than one company and two subsidiaries. If more than two subsidiaries are formed or acquired by a parent company, a separate qualifying party shall be registered with the board for each two additional subsidiary companies. Under no circumstances may an individual be the qualifying party for more than three such related entities, or for more than one unrelated entity;

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), LR 23:1495 (November 1997).

Chapter 7. Hearings; Meetings

§703. Disqualification or Debarment by Any Public Entity

Pursuant to the requirements of R.S. 37:2158(B), a public entity which disqualifies any person or licensee pursuant to R.S. 38:2212(J) must provide the board with written notification thereof within 30 days of the date of such disqualification. The notice required by §703 shall include the basis for the disqualification, the terms and provisions thereof, and copies of the evidence or basis upon which the disqualification was imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 23:1495 (November 1997).

Charles Marceaux
Executive Director

9711#014

RULE

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

Chemical Accident Prevention Program
(LAC 33:III.Chapter 59)(AQ157)

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 Air Quality Division regulations, LAC 33:III.Chapter 59 (AQ157).

This rule adds up-front registration requirements for all stationary sources that are subject to the chemical accident prevention rule, LAC 33:III.Chapter 59. It also repeals the existing "state-only" registration requiring more detailed information from only the major stationary sources. There is no up-front registration required by the federal rule, 40 CFR Part 68. The up-front registration is necessary for determining which facilities are subject to the rule so that sufficient funds can be obtained through the fee system to improve implementation of the program.

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 III. Air**

**Chapter 59. Chemical Accident Prevention and
Minimization of Consequences**

Subchapter A. General Provisions

§5903. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1125 (November 1996), repealed LR 23:1496 (November 1997).

§5910. Registration Schedule

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1125 (November 1996), repealed LR 23:1496 (November 1997).

**Subchapter B. Risk Management Program
Requirements**

§5911. Registration for Stationary Sources

A. The owner or operator of each stationary source that has a covered process as defined by 40 CFR 68.3 shall register with the Louisiana Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division by the latest of the following dates:

1. January 31, 1998; or
2. within 60 days after the date on which a stationary source becomes subject to this Chapter.

* * *

[See Prior Text in B]

1. the name of the stationary source, the owner/operator, the street address, the mailing address, the telephone number, and the program level (as defined by 40 CFR part 68) of the facility (highest program of a process at the facility, Program 3 being the highest);

2. the name, mailing address, and telephone number of the invoicing contact person;

3. the location of the source by parish, and latitude and longitude; and

4. the following certification dated and signed by the owner or operator:

"The undersigned certifies that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete."

C. If at any time after the submission of the registration, information in the registration is no longer accurate, the owner or operator shall submit an amended registration within 60 days to the Louisiana Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:426 (April 1994), amended LR 22:1125 (November 1996), LR 23:1496 (November 1997).

Gus Von Bodungen
Assistant Secretary

9711#052

RULE

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

**Chemical Accident Prevention Program
Fee Adjustment (LAC 33:III.223)(AQ154)**

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 Air Quality Division regulations, LAC 33:III.223 (AQ154).

This rule establishes fees for stationary sources that are subject to LAC 33:III.Chapter 59, Chemical Accident Prevention Program, authorized by Act 885 of the 1997 Regular Legislative Session. This rule will allow the collection of fees from subject facilities which will enable the department to properly implement this program as required by law.

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 III. Air**

**Chapter 2. Rules and Regulations for the Fee System
of the Air Quality Control Programs**

§223. Fee Schedule Listing

* * *

[See Prior Text in Fee Number 0010-1720]

Additional Fees		
Fee Number	Fee Description	Amount
* * *		
[See Prior Text in Fee Number 2000-2520]		
2600 *NOTE 16*	Accident Prevention Program Annual Maintenance Fee: Program 1	200.00
2620 *NOTE 16*	Accident Prevention Program Annual Maintenance Fee: Program 2	400.00
2630 *NOTE 16*	Accident Prevention Program Annual Maintenance Fee: Program 3	2500.00
* * *		
[See Prior Text in Fee Number 2700-2810]		

Explanatory Notes for Fee Schedule

* * *

[See Prior Text in Notes 1-15]

Note 16 Program is based on the highest level assigned to any process at the facility (Program 3 being the highest).

* * *

[See Prior Text in Notes 17-18]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496 (November 1997).

Gus Von Bodungen
Assistant Secretary

9711#055

RULE

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

Crude Oil and Condensate (LAC 33:III.2104)(AQ151)

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 Air Quality Division regulations, LAC 33:III.2104. The rule applies to any oil and gas production facility that has a potential to emit more than 50 Tons Per Year (TPY) of flash gas. Flash gas emitted to the atmosphere from tanks, reservoirs, process vessels, separators, or other containers is subject to this regulation. Subject facilities shall install a vapor recovery system that directs vapors to a fuel gas system, a sales gas system, an underground gas injection system, or a control device. Emissions shall be reduced by a minimum of 95 percent or reduced to less than 50 TPY potential flash gas emissions at the facility. Flash gas emissions from oil and gas production operations have been recognized as a significant source of VOC emissions. Recently reported emissions indicate individual sites emitting up to 4000 TPY of VOC due to flash gas and indicate total statewide VOC emissions due to flash gas of over 16000 TPY. These emissions have a significant impact on ambient air quality.

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 III. Air

Chapter 21. Control of Emissions of Organic Compounds

Subchapter A. General

§2104. Crude Oil and Condensate

A. Applicability. This Section applies to any oil and gas production facility (SIC Code 1311), natural gas processing plant (SIC Code 1321), or natural gas transmission facility (SIC Code 4922) that has a potential to emit more than 50 Tons Per Year (TPY) of flash gas to the atmosphere in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge, or more than 100 TPY of flash gas to the atmosphere in any other parish.

B. Definitions

Flash Gas—VOC emissions from depressurization of crude oil or condensate when it is transferred from a higher pressure to a lower pressure tank, reservoir, or other container. Flash gas emitted to the atmosphere from tanks, reservoirs, process vessels, separators, or other process equipment is subject to this Section. Emissions from sampling and maintenance activities are not included.

C. Control Requirements. Any facility to which this Section is applicable under Subsection A of this Section shall install a vapor recovery system. The vapor recovery system shall direct vapors to a fuel gas system, a sales gas system, an underground gas injection system, or a control device.

1. For facilities in any parish with a potential to emit 250 tons or more per year of flash gas, aggregated facility flash gas emissions shall be reduced by a minimum of 95 percent.

2. For facilities in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge with a potential to emit less than 250 tons per year of flash gas, aggregated facility flash gas emissions shall be reduced by a minimum of 95 percent or reduced to a potential to emit of less than 50 TPY.

3. For facilities in parishes other than Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge with a potential to emit less than 250 tons per year of flash gas, aggregated facility flash gas emissions shall be reduced by a minimum of 95 percent, or to a potential to emit of less than 100 TPY.

D. Exemptions. The following are exempt from the requirements of this Section:

1. facilities that are required by the NESHAP for oil and natural gas production (40 CFR part 63 subpart HH) to install controls for flash gas emissions;

2. tanks that have installed controls to comply with requirements of the New Source Performance Standards for storage vessels for petroleum liquid; and

3. temporary tanks associated with well testing operations for a period of up to 90 days following initial production from that well.

E. Compliance Schedule. For equipment located in Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge, compliance shall be achieved as soon as practicable, but no later than September 1, 1998. For all other

facilities compliance shall be achieved as soon as practicable, but no later than May 1, 1999.

F. Test Methods

1. Flares. Flares will be considered in compliance with Subsection C of this Section if the heat content of the gas is above 300 BTU/scf and the flare is equipped with an automatic flare relighting device, is equipped with a heat sensing device, or is visually checked daily to detect the presence of a flame.

2. Other Control Devices. The following test methods shall be used, where appropriate, to measure control device compliance. A fuel gas system, a sales gas system, or an underground injection system shall not be subject to this testing requirement:

a. test methods 1-4 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for determining flow rates, as necessary;

b. test method 18 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for measuring gaseous organic compound emissions by gas chromatographic analysis;

c. test method 21 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for determination of volatile organic compound leaks;

d. test method 25 (40 CFR part 60, appendix A, as incorporated by reference in LAC 33:III.3003) for determining total gaseous nonmethane organic emissions, such as carbon; and

e. additional performance test procedures, or equivalent test methods, approved by the administrative authority.

G. Monitoring/Recordkeeping/Reporting. The owner/operator of any oil and gas production facility shall maintain records to verify compliance with or exemption from this Section. The records shall be maintained on the premises, or at an alternative location approved by the administrative authority, for at least five years and will include, but not be limited to, the following:

1. the potential to emit flash gas from emission points that vent to the atmosphere, determined by using generally acceptable engineering calculation techniques or test methods. The method of calculation or testing must be approved by the administrative authority;

2. the following information for control devices required under Subsection C of this Section:

a. for flares:

i. the heat content of the gas;

ii. documentation of daily visual observations to detect the presence of a flame, if required by Subsection F.1 of this Section; and

iii. documentation of any failure to make a daily observation, including the mitigating circumstances, such as severe weather;

b. for other control devices:

i. daily measurements of the inlet and outlet gas temperature of a chiller or catalytic incinerator; or

ii. results of monitoring outlet VOC concentration of carbon adsorption bed to detect breakthrough;

3. the date and reason for any maintenance and repair of the applicable vapor recovery system and the estimated quantity and duration of volatile organic compound emissions during such activities. This requirement applies to vapors directed to a fuel gas system, sales gas system, underground gas injection system, control device, or any other system used to comply with Subsection C of this Section;

4. the results of any testing conducted in accordance with the provisions specified in Subsection F of this Section; and

5. all operating parameters required to verify the validity of the flash gas emissions as calculated in Subsection G.1 of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:1497 (November 1997).

Gus Von Bodungen
Assistant Secretary

9711#058

RULE

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

**Fee Adjustment for Title V Permit
Program (LAC 33:III.223)(AQ153)**

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 Air Quality Division regulations, LAC 33:III.223 (AQ153).

The rule increases fees collected by the Air Quality Regulatory Division by 8 percent. By act of the 1997 Regular Legislative Session the department is authorized to increase existing air quality program fees for fiscal year 1997-98. The department has previously adopted changes to the regulations in LAC 33:III.Chapter 5 to implement the federal Title V Permit Program for Air Quality. This program has been approved by EPA. Additional personnel were needed to review the permits to meet the federal deadline for review and issuance of the Title V permits. This regulation change to the fee schedule in LAC 33:III.Chapter 2 will enable the department to collect the fees necessary to fund permit writer positions.

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 III. Air

**Chapter 2. Rules and Regulations for the Fee System
 of the Air Quality Control Programs**
 §223. Fee Schedule Listing

FEE SCHEDULE LISTING						
Fee Number	Air Contaminant Source	SICC	Annual Maintenance Fee	New Permit Application	Modified Permit Fees	
					Major	Minor
0010	Reserved					
0020	Bituminous Coal and Lignite Mining	1211	573.00	2864.00	1720.00	573.00
0030	Coal Preparation	1211	1433.00	7163.00	4298.00	1433.00
0040	Crude Oil and Natural Gas Production (100 - 249 T/Yr Source)	1311	114.00	573.00	344.00	114.00
0041	Crude Oil and Natural Gas Production (250 - 499 T/Yr Source)	1311	354.00	1769.00	1061.00	354.00
0042	Crude Oil and Natural Gas Production Greater than 500 T/Yr Source	1311	589.00	2358.00	1769.00	589.00
0050	Natural Gas Liquids Per Unit	1321	287.00	1433.00	859.00	287.00
0060	Construction Sand and Gravel	1442	114.00	573.00	344.00	114.00
0070	Industrial Sand	1446	114.00	573.00	344.00	114.00
0080	Salt Mining	1476	1433.00	7163.00	4298.00	1433.00
0090	Sulfur Mining	1477	1433.00	7163.00	4298.00	1433.00
0100	Commercial Rice Milling	2044	573.00	2864.00	1720.00	573.00
0110	Animal Feed Preparation	2048	573.00	2864.00	1720.00	573.00
0120	Cane Sugar, Except Refining Only	2061	1433.00	7163.00	4298.00	1433.00
0130	Cane Sugar Refining per 1,000 Lb/Hr Rated Capacity	2062 MIN.	11.45 1414.00	57.31 7076.00	34.38 4245.00	11.45 1414.00
0140	Cottonseed Oil Mill	2074	287.00	1433.00	859.00	287.00
0150	Soybean Oil Mill	2075	201.00	1003.00	602.00	201.00
0160	Animal & Marine Fats and Oil (Rendering) 10,000 or More Ton/Yr	2077	686.00	3438.00	2062.00	686.00
0170	Animal & Marine Fats and Oil (Rendering) Less than 10,000 Ton/Yr	2077	344.00	1720.00	1032.00	344.00
0180	Shortening, Table Oils, Margarine and Other Edible Fats and Oils	2079	142.00	717.00	429.00	142.00
0190	Malt Beverages	2082	142.00	717.00	429.00	142.00
0200	Coffee Roasting Per 1,000,000 Lb/Yr Rated Capacity	2095 MIN. MAX.	114.00 272.00 7193.00	573.00 1360.00 35970.00	343.00 816.00 21582.00	114.00 272.00 7193.00
0210 *NOTE 9*	Sawmill and/or Planing Less than 25,000 Bd Ft/Shift	2421	287.00	1433.00	859.00	287.00
0220 *NOTE 9*	Sawmill and/or Planing More than 25,000 Bd Ft/Shift	2421	859.00	4298.00	2579.00	859.00
0230 *NOTE 9*	Hardwood Mill	2426	515.00	2579.00	1547.00	515.00

0240 *NOTE 9*	Special Product Sawmill N.E.C.	2429	515.00	2579.00	1547.00	515.00
0250	Millwork with 10 Employees or More	2431	515.00	2579.00	1547.00	515.00
0260	Hardwood Veneer and Plywood	2435	1146.00	5730.00	3438.00	1146.00
0270	Softwood Veneer and Plywood	2436	1146.00	5730.00	3438.00	1146.00
0280	Wood Preserving	2491	287.00	1433.00	859.00	287.00
0290	Particleboard/Waferboard Manufacture (O.S.B.)	2492	1146.00	5730.00	3438.00	1146.00
0300	Hardboard Manufacture	2499	859.00	4298.00	2579.00	859.00
0310	Furniture and Fixtures - A) 100 or More Employees	2511	362.00	1814.00	1088.00	362.00
0320	Furniture and Fixtures - B) More than 10 and Less than 100 Employees	2511	172.00	859.00	515.00	172.00
0330	Pulp Mills Per Ton Daily Rated Capacity	2611 MIN.	4.28 2948.00	21.48 14742.00	12.90 8845.00	4.28 2948.00
0340 *NOTE 1*	Paper Mill Per Ton Daily Rated Capacity	2621 MIN.	4.28 2948.00	21.48 14742.00	12.90 8845.00	4.28 2948.00
0350	Paperboard Mills Per Ton Daily Rated Capacity	2631 MIN.	4.28 2948.00	21.48 14742.00	12.90 8845.00	4.28 2948.00
0360	Paper Coating	2641	172.00	859.00	515.00	172.00
0365	Paper Bag Manufacture	2643	218.00	1088.00	653.00	218.00
0370	Insulation Manufacture	2649	287.00	1433.00	859.00	287.00
0375	Folding Paper Board Boxes Per Packaging Press Line	2651 MIN.	287.00 1414.00	1433.00 7076.00	859.00 4245.00	287.00 1414.00
0380	Corrugated Boxes - Converters (with Boilers)	2653	429.00	2148.00	1290.00	429.00
0381	Corrugated Boxes - Sheet Plant	2653	181.00	907.00	544.00	181.00
0390	Building Board and Tile	2661	1433.00	7163.00	4298.00	1433.00
0400	Commercial Printing - Black and White Per Press	2752 MIN.	171.00 825.00	859.00 4127.00	515.00 2476.00	171.00 825.00
0410	Commercial Printing - Color Per Press	2752 MIN.	286.00 1414.00	1432.00 7076.00	860.00 4245.00	286.00 1414.00
0420 *NOTE 2*	Caustic/Chlorine Per 1,000,000 Lb/Yr Rated Cap Posed on Chlorine	2812 MIN.	2.87 1414.00	14.33 7076.00	8.59 4245.00	2.87 1414.00
0440	Industrial Gases	2813	573.00	2864.00	1720.00	573.00
0450	Inorganic Pigments	2816	573.00	2864.00	1720.00	573.00
0460	Aluminum Sulfate Production Per 100 Ton/Yr Rated Capacity	2819 MIN.	1.42 1179.00	7.17 5896.00	4.28 3538.00	1.42 1179.00
0470	Alumina Per 1,000,000 Lb/Yr Rated Capacity	2819 MIN.	5.71 1179.00	28.64 5896.00	17.18 3538.00	5.71 1179.00
0480	Catalyst Mfg. and Cat. Regeneration Per Line	2819	1433.00	7163.00	4298.00	1433.00
0490	Fluosilicates	2819	859.00	4298.00	2579.00	859.00
0500	Industrial Inorganic Chemicals Mfg. N.E.C. Per 1,000,000 Lb/Yr	2819 MIN.	1.42 825.00	7.17 4127.00	4.28 2476.00	1.42 825.00
0510	Industrial Inorganic Acids N.E.C. Per 1,000,000 Lb/Yr Rated Capacity	2819 MIN.	14.33 1414.00	71.63 7076.00	42.98 4245.00	14.33 1414.00

0520	Nitric Acid Manufacture Per 1,000 Ton/Yr Rated Capacity	2819 MIN.	5.71 1414.00	28.64 7076.00	17.18 4245.00	5.71 1414.00
0530	Phosphoric Acid Mfg. Per Ton Daily Rated Cap	2819 MIN.	1.42 1179.00	7.17 5896.00	4.28 3538.00	1.42 1179.00
0540	Sulphuric Acid Manufacture Per Ton Daily Rated Capacity	2819 MIN.	1.42 1179.00	7.17 5896.00	4.28 3538.00	1.42 1179.00
0550	Polyethylene/Polypropolene Manufacture Per 1,000,000 Lb/Yr Rated Capacity	2821 MIN.	11.45 1414.00	57.31 7076.00	34.38 4245.00	11.45 1414.00
0560	PVC Manufacture Per 1,000,000 Lb/Yr Rated Capacity	2821 MIN.	14.33 1414.00	71.63 7076.00	42.98 4245.00	14.33 1414.00
0570	Synthetic Resins Manufacture N.E.C. Per 1,000,000 Lb/Yr Rated Capacity	2821 MIN.	14.33 1414.00	71.63 7076.00	42.98 4245.00	14.33 1414.00
0580	Rubber Mfg. Per 1,000,000 Lb/Yr Rated Capacity	2822 MIN.	14.33 1414.00	71.63 7076.00	42.98 4245.00	14.33 1414.00
0585	Paint Manufacturing and Blending	2851	533.00	2665.00	1599.00	533.00
0590	Charcoal Per Oven	2861	287.00	1433.00	859.00	287.00
0600	Gum and Wood Chemicals Per Unit	2861	859.00	4298.00	2579.00	859.00
0610	Styrene Monomer Per 1,000,000 Lb/Yr Rated Capacity	2865 MIN.	5.71 1414.00	28.64 7076.00	17.18 4245.00	5.71 1414.00
0620	Halogenated Hydrocarbons Per 1,000,000 Lb/Yr Rated Capacity	2869 MIN.	8.59 1414.00	42.98 7076.00	25.79 4245.00	8.59 1414.00
0630	Organic Oxides, Alcohols, Glycols Per 1,000,000 Lb/Yr Rated Capacity	2869 MIN.	5.71 1414.00	28.64 7076.00	17.18 4245.00	5.71 1414.00
0635	Olefins and Aromatics N.E.C. Per 1,000,000 Lb/Yr Rated Capacity	2869 MIN.	5.71 1414.00	28.64 7076.00	17.18 4245.00	5.71 1414.00
0640	Ammonia Manufacture Per Ton Daily Rated Capacity	2873 MIN.	2.86 1414.00	14.33 7076.00	8.59 4245.00	2.86 1414.00
0650	Fertilizer Manufacture Per 1,000 Ton/Yr Rated Capacity	2873 MIN.	1.42 825.00	7.17 4127.00	4.28 2476.00	1.42 825.00
0660	Urea and Ureaform Per 1,000 Ton/Yr Rated Capacity	2873 MIN.	2.86 825.00	14.33 4127.00	8.59 2476.00	2.86 825.00
0670	Pesticides Mfg. Per Train	2879	1146.00	5730.00	3438.00	1146.00
0680	Carbon Black Manufacture Per 1,000,000 Lb/Yr Rated Capacity	2895 MIN.	17.18 1414.00	85.94 7076.00	51.58 4245.00	17.18 1414.00
0690	Chemical and Chemical Prep. N.E.C. Per 1,000,000 Lb/Yr	2899 MIN.	14.33 1179.00	71.63 5896.00	42.98 3538.00	14.33 1179.00
0695	Chemical and Chemical Prep. N.E.C. with Output Less than 1,000,000 Lb/Yr	2899	816.00	4082.00	2449.00	816.00
0700	Drilling Mud-Storage and Distribution	2899	287.00	1433.00	859.00	287.00
0710	Drilling Mud-Grinding	2899	1146.00	5730.00	3438.00	1146.00
0715	Salt Processing & Packaging Per 1,000,000 Lb/Yr	2899 MIN.	00.23 354.00	1.17 1769.00	0.70 1061.00	00.23 354.00
0720 *NOTE 3*	Petroleum Refining Per 1,000 BBL/Day Rated Capacity Crude Thruput	2911 MIN.	71.63 1414.00	358.16 7076.00	214.89 4245.00	71.63 1414.00
0730 *NOTE 4*	Asphaltic Concrete Paving Plants Per Ton/Hr Rated Capacity	2951 MIN.	2.16 589.00	10.77 2948.00	6.46 1769.00	2.16 589.00
0740	Asphalt Blowing Plant (Not to be Charged Separately if in Refinery)	2951	859.00	4298.00	2579.00	859.00
0760 *NOTE 5*	Blending, Compounding, or Refining of Lubricants Per Unit	2992	859.00	4298.00	2579.00	859.00

0770	Petroleum Coke Calcining Per 1,000 Ton/Yr Rated Capacity	2999 MIN.	11.45 1414.00	57.31 7076.00	34.38 4245.00	11.45 1414.00
0775	Plastics Injection Moulding and Extrusion Per Line	3079	287.00	1433.00	859.00	287.00
0780	Glass and Glass Container Mfg. Natural Gas Fuel Per Line	3229	429.00	2148.00	1290.00	429.00
0790	Cement Manufacture Per 1,000 Ton/Yr Rated Capacity	3241 MIN.	8.59 1179.00	42.98 5896.00	25.79 3538.00	8.59 1179.00
0800	Glass and Glass Container Mfg. Fuel Oil Per Line	3241	859.00	4298.00	2579.00	859.00
0810	Brick Manufacture Per 1,000 Ton/Yr Rated Capacity	3251 MIN.	4.28 589.00	21.48 2948.00	12.90 1769.00	4.28 589.00
0815	Concrete Products	3272	290.00	1451.00	870.00	290.00
0820 *NOTE 12*	Ready-Mix Concrete	3273	717.00	2177.00	1433.00	717.00
0830	Lime Manufacture Per 1,000 Ton/Yr Rated Capacity	3274 MIN.	8.59 825.00	42.98 4127.00	25.79 2476.00	8.59 825.00
0840	Gypsum Manufacture Per 1,000 Ton/Yr Rated Capacity	3275 MIN.	8.59 825.00	42.98 4127.00	25.79 2476.00	8.59 825.00
0850	Asbestos Products Per Site or Per Production Unit	3292	1720.00	8596.00	5158.00	1720.00
0860	Clay Kiln	3295	344.00	1720.00	1032.00	344.00
0870	Rock Crusher	3295	315.00	1576.00	946.00	315.00
0880	Gray Iron and Steel Foundries A) 3,500 or More Ton/Yr Production	3321	459.00	2291.00	1375.00	459.00
0890	Gray Iron and Steel Foundries B) Less than 3,500 Ton/Yr Production	3321	228.00	1146.00	686.00	228.00
0900	Malleable Iron Foundries A) 3,500 or More Ton/Yr Production	3322	459.00	2291.00	1375.00	459.00
0910	Malleable Iron Foundries B) Less than 3,500 Ton/Yr Production	3322	228.00	1146.00	686.00	228.00
0920	Steel Investment Foundries A) 3,500 or More Ton/Yr Production	3324	459.00	2291.00	1375.00	459.00
0930	Steel Investment Foundries B) Less than 3,500 Ton/Yr Production	3324	228.00	1146.00	686.00	228.00
0940	Steel Foundries Not Elsewhere Classified A) 3,500 or More Ton/Yr Production	3325	459.00	2291.00	1375.00	459.00
0950	Steel Foundries Not Elsewhere Classified B) Less than 3,500 Ton/Yr Production	3325	228.00	1146.00	686.00	228.00
0960	Primary Smelting and Refining of Copper Per 100,000 Lb/Yr Rated Capacity	3331 MIN.	5.71 1414.00	28.64 7076.00	17.18 4245.00	5.71 1414.00
0970	Aluminum Production Per Pot	3334 MIN.	28.64 1414.00	143.27 7076.00	85.94 4245.00	28.64 1414.00
0980	Refining of Non-Ferrous Metals N.E.C. Per 1,000 Lb/Yr Rated Capacity	3339 MIN.	0.03 1414.00	0.27 7076.00	0.16 4245.00	0.03 1414.00
0990	Secondary Smelting of Non-Ferrous Metals Per Furnace	3341 MIN.	859.00 1769.00	4298.00 8845.00	2579.00 5307.00	859.00 1769.00
1000	Wire Manufacture	3357	573.00	2864.00	1720.00	573.00
1010	Aluminum Foundries (Castings) Per Unit	3361	228.00	1146.00	686.00	228.00

1020	Brass/Bronze/Copper-Based Alloy Foundry Per Furnace	3362	287.00	1433.00	859.00	287.00
1030	Metal Heat Treating Including Shotpeening	3398	172.00	859.00	515.00	172.00
1040	Metal Can Manufacture	3411	573.00	2864.00	1720.00	573.00
1050	Drum Manufacturing and/or Reconditioning	3412	859.00	4298.00	2579.00	859.00
1059	Fabricated Structural Steel with 5 or More Welders	3441	573.00	2864.00	1720.00	573.00
1060	Fabricated Plate Work with 5 or More Welders	3443	725.00	3628.00	2177.00	725.00
1070	Electroplating, Polishing and Anodizing with 5 or More Employees	3471	172.00	859.00	515.00	172.00
1080	Sandblasting or Chemical Cleaning of Metal: A) 10 or More Employees	3471	859.00	4298.00	2579.00	859.00
1090	Sandblasting or Chemical Cleaning of Metal: B) Less than 10 Employees	3471	429.00	2148.00	1290.00	429.00
1100	Coating, Engraving, and Allied Services: A) 10 or More Employees	3479	315.00	1576.00	946.00	315.00
1110	Coating, Engraving, and Allied Services: B) Less than 10 Employees	3479	172.00	859.00	515.00	172.00
1120	Galvanizing and Pipe Coating Excluding All Other Activities	3479	344.00	1720.00	1032.00	344.00
1130	Painting Topcoat Per Line	3479	287.00	1433.00	859.00	287.00
1140	Potting Per Line	3479	172.00	859.00	515.00	172.00
1150	Soldering Per Line	3479	172.00	859.00	515.00	172.00
1160	Wire Coating Per Line	3479	573.00	2864.00	1720.00	573.00
1170	Oil Field Machinery and Equipment	3533	287.00	1433.00	859.00	287.00
1180	Power Chain Saw Manufacture Per Line	3546	429.00	2148.00	1290.00	429.00
1190	Commercial Grain Dryer	3559	344.00	1720.00	1032.00	344.00
1195	Electric Transformers Per 1,000 Units/Year	3612 MIN.	133.27 362.00	666.33 1814.00	399.80 1088.00	133.27 362.00
1200	Electrode Manufacture Per Line	3624	401.00	2004.00	1203.00	401.00
1210	Telephone Manufacture Per Line	3661	1003.00	5014.00	3008.00	1003.00
1220	Electrical Connector Manufacture Per Line	3678	515.00	2579.00	1547.00	515.00
1230	Battery Manufacture Per Line	3691	573.00	2864.00	1720.00	573.00
1240	Electrical Equipment Per Line	3694	344.00	1720.00	1032.00	344.00
1245	Automobile, Truck and Van Assembly Per 1,000 Vehicles Per Year Capacity	3711 MIN. MAX	143.27 907.00 28658.00	716.29 4536.00 143292.00	429.77 2721.00 85975.00	143.27 907.00 28658.00
1250	Ship and Boat Building: A) 5001 or More Employees	3732	4298.00	21489.00	12894.00	4298.00
1260	Ship and Boat Building: B) 2501 to 5000 Employees	3732	2864.00	14327.00	8596.00	2864.00
1270	Ship and Boat Building: C) 1001 to 2500 Employees	3732	1433.00	7163.00	4298.00	1433.00
1280	Ship and Boat Building: D) 201 to 1000 Employees	3732	859.00	4298.00	2579.00	859.00

1290	Ship and Boat Building: E) 200 or Less Employees	3732	287.00	1433.00	859.00	287.00
1300	Playground Equipment Manufacture Per Line	3949	429.00	2148.00	1290.00	429.00
1310	Grain Elevators: A) 20,000 or More Ton/Yr	4221	915.00	4584.00	2750.00	915.00
1320	Grain Elevators: B) Less than 20,000 Ton/Yr	4221	459.00	2291.00	1375.00	459.00
1330 *NOTE 6*	A) Petroleum, Chemical Bulk Storage & Terminal (over 3,000,000 BBL Capacity)	4226	8596.00	42979.00	25788.00	8596.00
1340 *NOTE 6*	B) Petroleum, Chemical Bulk Storage & Terminal (1,000,000- 3,000,000 BBL Capacity)	4226	5730.00	28652.00	17191.00	5730.00
1350 *NOTE 6*	C) Petroleum, Chemical Bulk Storage & Terminal (500,001- 1,000,000 BBL Capacity)	4226	2864.00	14327.00	8596.00	2864.00
1360 *NOTE 6*	D) Petroleum, Chemical Bulk Storage & Terminal (500,000 BBL Capacity or Less)	4226	1433.00	7163.00	4298.00	1433.00
1361 *NOTE 8*	Wholesale Distribution of Coke and Other Bulk Goods Per 1,000 Ton/Yr Capacity	4463 MIN.	0.58 1414.00	2.87 7076.00	1.70 4245.00	0.58 1414.00
1362	Crude Oil Pipeline - Facility with Less than 100,000 BBL Storage Capacity	4612	635.00	3175.00	1905.00	635.00
1363	Crude Oil Pipeline - Facility with 100,000 to 500,000 BBL Storage Capacity	4612	907.00	4536.00	2721.00	907.00
1364	Crude Oil Pipeline - Facility with Over 500,000 BBL Storage Capacity	4612	1270.00	6350.00	3810.00	1270.00
1366	Refined Oil Pipeline - Facility with Less than 100,000 BBL Storage Capacity	4613	544.00	2721.00	1632.00	544.00
1367	Refined Oil Pipeline - Facility with 100,000 to 500,000 BBL Storage Capacity	4613	725.00	3628.00	2177.00	725.00
1368	Refined Oil Pipeline - Facility with Over 500,000 BBL Storage Capacity	4613	1088.00	5443.00	3265.00	1088.00
1370	Railcar/Barge/Tank Truck Cleaning Heavy Fuels Only	4742	287.00	1433.00	859.00	287.00
1380	Railcar and Barge Cleaning Other Than Heavy Fuels	4742	1433.00	7163.00	4298.00	1433.00
1390	Tank Truck Cleaning Other Than Heavy Fuels	4742	859.00	4298.00	2579.00	859.00
1400	A) Electric Power Gen. Per MW (Over 0.7% S in Fuel)	4911 MIN.	13.31 2712.00	66.62 13562.00	39.97 8137.00	13.31 2712.00
1410 *NOTE 7*	B) Electric Power Gen. Per MW (0.7% S or Less in Fuel)	4911 MIN.	7.98 1297.00	39.97 6486.00	23.98 3892.00	7.98 1297.00
1420	C) Electric Power Gen. Per MW (Natural Gas Fired)	4911 MIN.	4.01 943.00	19.99 4717.00	11.99 2830.00	4.01 943.00
1430 *NOTE 11*	Natural Gas Comp Per 100 H.P. (Turbines)	4922	5.71	28.64	17.18	5.71
1440 *NOTE 11*	Recip. Nat Gas Comp Per 100 H.P.: A) 50,000 H.P.	4922	25.80	128.95	77.36	25.80
1450 *NOTE 11*	Recip. Nat Gas Comp Per 100 H.P.: B) 20,000 to 50,000 H.P.	4922	28.64	143.27	85.94	28.64

1460 *NOTE 11*	Recip. Nat Gas Comp Per 100 H.P.: C) 5,000 to 20,000 H.P.	4922	34.38	171.91	103.12	34.38
1470 *NOTE 11*	Recip. Nat Gas Comp Per 100 H.P.: D) 2,500 to 5,000 H.P.	4922	40.12	200.54	120.33	40.12
1480 *NOTE 11*	Recip. Nat Gas Comp Per 100 H.P.: E) 1,000 to 2,500 H.P.	4922	42.98	214.89	128.95	42.98
1490 *NOTE 11*	Recip. Nat Gas Comp: F) less than 1,000 H.P.	4922	573.00	1433.00	573.00	573.00
1500 *NOTE 10*	Coal Gassification Per \$100,000 Capital Cost	4925 MIN MAX	5.71 907.00 45877.00	28.64 4536.00 229385.00	17.18 2721.00 137630.00	5.71 907.00 45877.00
1510 *NOTE 10*	Co-Generation Per \$100,000 Capital Cost	4939 MIN. MAX.	5.71 907.00 28658.00	28.64 4536.00 143292.00	17.18 2721.00 85975.00	5.71 907.00 28658.00
1520	Incinerators: A) 1,000 Lb/Hr and Greater Capacity	4953	362.00	1814.00	1088.00	362.00
1521	Incinerators: B) Less than 1,000 Lb/Hr Capacity	4953	117.00	589.00	354.00	117.00
1530	Municipal Incinerators	4953	2864.00	14327.00	8596.00	2864.00
1532	Commercial Hazardous Waste Incinerator Per 1,000,000 BTU Per Hour Thermal Capacity	4953 MIN.	165.11 3628.00	825.55 18144.00	495.33 10886.00	165.11 3628.00
1533	Non Commercial Hazardous Waste Incinerator (Per 1,000,000 BTU/Hr Thermal Capacity)	4953 MIN.	82.55 2358.00	413.34 11793.00	247.66 7076.00	82.55 2358.00
1534	Commercial Hazardous Waste Disp. Facility, N.E.C.	4953	23587.00	117936.00	70761.00	23587.00
1535	Commercial Hazardous Waste Underground Injection (Surface Facilities) Per Location	4953	4717.00	23587.00	14152.00	4717.00
1536	Recoverable/Re-usable Materials Proc. Facility (Per 1,000,000 BTU/Hr Thermal Capacity)	4953 MIN. MAX.	82.55 2358.00 11793.00	412.77 11793.00 58968.00	247.66 7076.00 35380.00	82.55 2358.00 11793.00
1540	Steam Gen. Units Per 1000 Lbs/Hr Steam Cap-Natural Gas or Comb Non- Fossil Fuels	4961 MIN.	1.42 235.00	7.17 1179.00	4.28 707.00	1.42 235.00
1550	Steam Gen. Units Per 1000 Lbs/Hr Steam Cap-Fuels with 0.7% S or Less	4961 MIN.	2.87 589.00	14.33 2948.00	8.59 1769.00	2.87 589.00
1560	Steam Gen. Units Per 1000 Lbs/Hr Steam Cap-Fuels with More than 0.7% S	4961 MIN.	4.28 825.00	21.48 4127.00	12.90 2476.00	4.28 825.00
1570	Cement (Bulk Distribution)	5052	1146.00	5730.00	3438.00	1146.00
1580	Wholesale Distribution of Coal Per 1,000 Ton/Yr Throughput	5052 MIN.	0.27 825.00	1.42 4127.00	0.84 2476.00	0.27 825.00
1590	Automobile Recycling Scrap Per 1000 Ton/Yr	5093 MIN. MAX.	11.79 589.00 28658.00	58.96 2948.00 143292.00	35.38 1769.00 85975.00	11.79 589.00 28658.00
1600	Floating Bulk Loader: A) Over 100,000 Ton/Yr Throughput	5153	2864.00	14327.00	8596.00	2864.00
1610	Floating Bulk Loader: B) 100,000 or Less Ton/Yr Throughput	5153	1433.00	7163.00	4298.00	1433.00
1611	Dry Bulk Transfer Derrick Crane Barge Up to 25% Annual Grain Transfer	5153	816.00	4082.00	2449.00	816.00
1612	Dry Bulk Transfer Derrick Crane Barge - No Grain Transfer	5153	544.00	2721.00	1632.00	544.00

1620	Grain Elevators-Terminal Per 10,000 Bu/Yr Throughput	5153 MIN.	0.27 1297.00	1.42 6486.00	0.84 3892.00	0.27 1297.00
1630	Wholesale Distribution of Chemicals and Allied Products Per Facility	5161	717.00	2864.00	2148.00	717.00
1640	Petroleum Bulk Plants	5171	58.32	287.00	172.00	58.32
1650	Petroleum Bulk Terminal	5171	573.00	2864.00	1720.00	573.00
1660	Petroleum Bulk Station	5171	58.32	287.00	172.00	58.32
1670	Storage Tank	5171	0.00	573.00	287.00	287.00
1680	Crude Oil Distribution	5172	859.00	4298.00	2579.00	859.00
1690	Tire Recapping Plant	7534	117.00	589.00	354.00	117.00
1700	Chemical Waste Disposal Facility for Non Hazardous Waste	9998	2665.00	13327.00	7996.00	2665.00
1710	Negotiated Fee	9999	0.00	0.00	0.00	0.00
1711	Research Fee for Alternate Disposal of Hazardous Waste	9999	0.00	0.00	0.00	0.00
1720 *Note 15*	Small Business Sources	N/A	108.00	540.00	324.00	108.00

Additional Fees		
Fee Number	Fee Description	Amount
2000	Company Name Change and/or Transfer of an Existing Permit	113.00
2010	The Issuance or Denial of Variances and Exemptions	226.00
	* * * [See Prior Text in Nos. 2020-2100]	
2200 *NOTE 13*	Air Toxics Annual Fee Per Ton Emitted on an Annual Basis Class I Pollutants Class II Pollutants Class III Pollutants	108.00 54.00 27.00
2300 *NOTE 14*	Criteria Pollutant Annual Fee Per Ton Emitted on an Annual Basis: Nitrogen oxides (NO _x) Sulfur dioxide (SO ₂) Non-toxic organic (VOC) Particulate (PM ₁₀)	9.72/ton
	* * * [See Prior Text in Nos. 2400-2810]	

Explanatory Notes for Fee Schedule

* * *

[See Prior Text in Notes 1-10]

Note 11. The maximum annual maintenance fee for categories 1430-1490 is not to exceed \$28,658 total for any one gas transmission company.

Note 12. The maximum annual maintenance fee for one location with two or more plants shall be \$1,297.

* * *

[See Prior Text in Notes 13-18]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended

LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1499 (November 1997).

Gus Von Bodungen
Assistant Secretary

9711#059

RULE

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

**Limiting Volatile Organic Compound Emissions
from Batch Processing (LAC 33:III.2149)(AQ159)**

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 Air Quality Division regulations, LAC 33:III.2149 (AQ159).

The exemption for individual vents is changed to 500 lbs/yr, regardless of what type of equipment the vent is associated with. This is consistent with EPA's Batch Control Technology Guide. Additional language clarifies the scope of the exemption. EPA has reviewed LAC 33:III.2149 for approvability for inclusion in the State Implementation Plan and has requested that the exemption levels for individual vents be modified. The previous rule addressed exemption levels for only three specific types of equipment and did not specify exemption levels for other types of equipment.

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 III. Air**

**Chapter 21. Control of Emission of Organic
Compounds**

**Subchapter K. Limiting Volatile Organic Compound
Emissions from Batch Processing**

**§2149. Limiting Volatile Organic Compound Emissions
from Batch Processing**

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

b. single unit operations that have mass AE of 500 lb/yr or less.

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

a. If, for the process vent streams in aggregate, the value of FR calculated using the applicable RACT equation is negative (i.e., less than zero), then the process is exempt from the control requirements and there is no need to proceed with the successive ranking scheme described in Subsection C.2.f of this Section. This would occur if the mass annual emission rates are below the lower limits specified in Subsection A.2.a of this Section.

b. If, for the process vent streams in aggregate, the actual average flow rate value (in the units of scfm) is below the value of FR calculated using the applicable RACT equation, then the overall emissions from the batch process must be reduced by 90 percent and there is no need to proceed with the successive ranking scheme described in Subsection C.2.f of this Section. The owner or operator has the option of selecting which unit operations are to be controlled and to what levels so long as the overall control meets the specified

level of 90 percent. Single units that are below the exemption level specified in Subsection A.2.b of this Section would not have to be controlled even if all units should qualify for the exemption.

c. If, for the process vent streams in aggregate, the actual average flow rate value (in the units of scfm) is greater than the value of FR calculated using the applicable RACT equation (and the calculated value of FR is a positive number), then the control requirements must be evaluated with the successive ranking scheme described in Subsection C.2.f of this Section until control of a segment of unit operations is required or until all unit operations have been eliminated from the process pool. Single units that are below the exemption level specified in Subsection A.2.b of this Section would not have to be included in the rankings and would not have to be controlled even if all units should qualify for the exemption.

d. Sources that will be required to be controlled to the level specified by the RACT (90 percent) will have an average flow rate that is below the flow rate specified by the RACT equation (when the source's annual emission total is input). The applicability criterion is implemented on a two-tier basis. First, single pieces of batch equipment corresponding to distinct unit operations shall be evaluated over the course of an entire year, regardless of what materials are handled or what products are manufactured in them. Second, equipment shall be evaluated as an aggregate if it can be linked together based on the definition of a process.

e. To determine applicability of a RACT option in the aggregation scenario, all the VOC emissions from a single process shall be summed to obtain the annual mass emission total, and the weighted average flow rates from each process vent in the aggregation shall be used as the average flow rate.

f. All unit operations in the batch process, as defined for the purpose of determining RACT applicability, shall be ranked in ascending order according to their ratio of annual emission (lb/yr) divided by average flow rate (in scfm). Sources with the smallest ratios shall be listed first. This list of sources constitutes the "pool" of sources within a batch process. The annual emission total and average flow rate of the pool of sources shall then be compared against the RACT equations to determine whether control of the pool is required. If control is not required after the initial ranking, unit operations having the lowest annual emissions/average flow rates ratios shall then be eliminated one by one, and the characteristics of annual emission and average flow rate for the remaining pool of equipment will have to be evaluated with each successive elimination of a source from the pool. Control of the unit operations remaining in the pool to the specified level shall be required once the aggregated characteristics of annual emissions and average flow rates have met the specified RACT. The owner or operator has the option of selecting which unit operations are to be controlled and to what levels so long as the overall control meets the specified level of 90 percent.

[See Prior Text in D-G.2.c.v]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:387 (April 1995), amended LR 22:1212 (December 1996), LR 23:1507 (November 1997).

Gus Von Bodungen
Assistant Secretary

9711#053

RULE

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

**SOCMI Chemicals Revision
(LAC 33:III.2147 and Chapter 21,
Appendix A)(AQ156)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.2147 and Chapter 21, Appendix A, SOCMI Chemicals (AQ156).

Table 8, the SOCMI chemical list, is moved to Appendix A and given a name and an introductory paragraph. References to Table 8 are updated to reflect its new location. Urea is being removed from the SOCMI chemical list. It had previously been removed in 1984. Then in 1987, when all of DEQ's regulations were recodified, the original Table 8 was mistakenly substituted and published. This rulemaking corrects the error and adds other clarifications to Table 8.

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 III. Air**

Chapter 21. Control of Emission of Organic Compounds

Note: Table 8, currently located after §2145, is being moved to the end of Chapter 21, becoming Appendix A.

Subchapter J. Limiting Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)

§2147. Limiting VOC Emissions from SOCMI Reactor Processes and Distillation Operations

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

B. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Subchapter shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise.

[See Prior Text]

Process Unit—equipment assembled and connected by pipes or ducts to produce, as intermediates or final products, one or more synthetic organic chemical manufacturing industry (SOCMI) chemicals (see LAC 33:III.Chapter 21.Appendix A). A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities.

[See Prior Text in B.Product-F.4.Figure 1]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:380 (April 1995), amended LR 22:1212 (December 1996), LR 23:1508 (November 1997).

Appendix A

An industry is considered a Synthetic Organic Chemical Manufacturing Industry (SOCMI), as defined in LAC 33:III.111, if it produces, as intermediates or final products, one or more of the chemicals listed in the following table:

SOCMI Chemicals	
CAS No*	Chemical
*** [See Prior Text]	
75-50-3	Trimethylamine
108-05-4	Vinyl acetate
*** [See Prior Text]	

[See Prior Text]

Gus Von Bodungen
Assistant Secretary

9711#050

RULE

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

**Standards of Performance for
Crematories (LAC 33:III.2531)(AQ155)**

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 Air Quality Division regulations, LAC 33:III.2531 (AQ155).

The changes remove the operator training requirement for crematory operators and remove the term "reconstruction" from the regulation. These changes eliminate a requirement that has no environmental benefit that can justify the cost of the requirement. The term "reconstruction" was used in the regulation when the term "modification" would have been

sufficient. The definition of this term also referred to LAC 33:III.3129, which has been repealed. Deleting the term simplifies the regulation and does not result in any increase in emissions.

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 III. Air

Chapter 25. Miscellaneous Incineration Rules

Subchapter D. Crematories

§2531. Standards of Performance for Crematories

A. The provisions of this Subchapter apply to all new, modified, and existing crematories used in the disposal of Type IV wastes and their appropriate containers.

B. Definitions. Terms used in this Section are defined in LAC 33:III.111 of these regulations with the exception of those terms specifically defined below as follows:

* * *

[See Prior Text]

Crematory—any furnace or incinerator used in the process of burning Type IV waste for the purpose of reducing the volume of the waste by removing combustible matter and vaporizing of moisture through the application of heat.

Type IV Waste—human and animal remains consisting of carcasses, organs, and solid organic wastes comprising up to 85 percent moisture and 5 percent incombustible solids.

* * *

[See Prior Text in C-D]

1. Any new or modified facility regulated under Subsection A of this Section for which a complete application for a permit to construct was received after October 20, 1994, shall comply with all of the requirements of this Subchapter before operation may commence.

* * *

[See Prior Text in D.2-2.a]

b. control equipment requirements of Subsection G of this Section shall be complied with no later than one year after promulgation of this regulation; and

c. incinerator physical parameter requirements of Subsection H of this Section shall be complied with no later than two years after promulgation of this regulation.

* * *

[See Prior Text in E-F.4]

5. All equipment, accessories, and appurtenances, (e.g., secondary burners, control equipment, etc.) of a crematory incinerator shall be maintained in proper working condition and shall be operational at all times when the crematory is in use.

* * *

[See Prior Text in G-H]

1. Any facility regulated under Subsection A of this Section which commences construction or modification after October 20, 1994, shall provide design calculations to confirm a sufficient volume in the secondary (or last) chamber combustion zone to provide for at least a 1.0 second gas residence time at 1800°F. Primary chamber and stack shall not be used in calculating this residence time. The actual

operating temperature of the secondary (or last) chamber combustion zone will be not less than 1600°F throughout the combustion process. The primary chamber shall not be charged unless the secondary (or last) chamber combustion zone temperature is equal to or greater than 1600°F.

* * *

[See Prior Text in H.2]

I. Recordkeeping and Reporting

1. The facility owner/operator shall maintain the following records on the facility premises at all times, and present them to an authorized representative of the department upon request:

- a. application approval records and permit to construct/operate;
- b. all other necessary permits and authorizations from local and/or other state regulatory agencies;
- c. equipment maintenance records;
- d. copies of all test results;
- e. daily record of the number of hours of operation; and
- f. all records of upset conditions with time and duration of upset noted.

2. A copy of all test results shall be submitted to the Department of Environmental Quality, Air Quality Division for review and approval within 45 days of completion of testing.

J. Testing

1. All crematories with a design charge rate greater than 500 pounds per hour shall conduct emissions testing within 180 days of initial start-up to verify compliance with Subsections E.1-2 and F.1 of this Section using the following test methods:

- a. Method 5—Determination of Particulate Emissions from Stationary Sources (40 CFR part 60, appendix A, as incorporated by reference at LAC 33:III.3003);
- b. Method 10—Determination of Carbon Monoxide Emissions from Stationary Sources (40 CFR part 60, appendix A, as incorporated by reference at LAC 33:III.3003);
- c. Method 9—Visual Determination of the Opacity of Emissions from Stationary Sources (40 CFR part 60, appendix A, as incorporated by reference at LAC 33:III.3003); and
- d. other tests which may be added at pretest meetings.

2. The owner/operator shall provide the department at least 30 days prior notice of any emission test to afford the department the opportunity to conduct a pretest conference and to have an observer present. The department has the authority to invalidate any testing where such notice is not provided.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1107 (October 1994), amended LR 22:1127 (November 1996), LR 22:1212 (December 1996), LR 23:1509 (November 1997).

Gus Von Bodungen
Assistant Secretary

9711#051

RULE

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

**Synthetic Organic Chemical Manufacturing Industry
Vent Stream Exemption (LAC 33:III.2147)(AQ150)**

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 Air Quality Division regulations, LAC 33:III.2147 (AQ150).

This revision to LAC 33:III.2147 provides an exemption from temperature monitoring, record keeping, and reporting requirements of this Section for vent streams on affected reactor processes and distillation operations having a Total Resource Effectiveness (TRE) index value greater than 4.0. The revision also provides for process change requirements and conditions for loss of exempt status. After consultation with EPA and industry, analysis of data and related regulations, and EPA policy decisions, the department finds it reasonable and permissible to provide for the exemption as requested by industry.

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 III. Air**

**Chapter 21. Control of Emission of Organic
Compounds**

**Subchapter J. Limiting Volatile Organic Compound
(VOC) Emissions from Reactor
Processes and Distillation Operations in
the Synthetic Organic Chemical
Manufacturing Industry (SOCMI)**

**§2147. Limiting VOC Emissions from SOCMI Reactor
Processes and Distillation Operations**

[See Prior Text in A-D.1]

a. If the TRE value calculated using such engineering assessment and the TRE equation in Subsection D.6 of this Section is greater than 4.0, then it is not required that the owner or operator perform the measures specified in Subsection D.5, the monitoring requirements in Subsection E, or the reporting/record keeping requirements of Subsection F.1 of this Section. If a subsequent process change effects a reduction in the TRE index value to 4.0 or less, the owner or operator is immediately subject to all requirements of this Section that are applicable to a recalculated TRE value of 4.0 or less.

[See Prior Text in D.1.b-D.6.b]

7. Each owner or operator of a vent stream subject to Subsection C.2 of this Section shall recalculate the flow rate,

TOC concentration, and TRE index value for that vent stream within two weeks of any process change that could effect a change in one or more of these vent stream parameters. The recalculations must be made using the methods and procedures contained in this Subsection. Examples of process changes include, but are not limited to, changes in production capacity, feedstock type, or catalyst type or replacement, removal, or addition of recovery equipment.

8. Where a TRE index value, recalculated as required in Subsection D.7 of this Section, yields a value less than or equal to 1.0, the owner or operator shall, within one week of the recalculation, notify the administrative authority* of the process change and the results of the recalculation and shall conduct a performance test, as provided in Subsection D.1.b and 5 of this Section, as soon as possible, but no later than 90 days after the recalculation. If the recalculated TRE index value is verified by the performance test to be less than or equal to 1.0, the owner or operator is immediately subject to all requirements of this Section that are applicable to a recalculated TRE value of 1.0 or less.

9. Procedures contained in Subsection D.9.a-e of this Section shall be used to demonstrate that a process vent stream has a VOC concentration below 500 ppm by volume.

[See Prior Text in D.9.a-Figure 1]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:380 (April 1995), amended LR 22:1212 (December 1996), LR 23:1510 (November 1997).

Gus Von Bodungen
Assistant Secretary

9711#054

RULE

**Department of Environmental Quality
Office of Waste Services
Hazardous Waste Division**

**Financial Assurance and Cleanup
(LAC 33:V.Chapters 1,13,19,37,43, and 49)
(HW052)**

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 Hazardous Waste Division regulations, LAC 33:V.Chapters 1, 13, 19, 37, 43, and 49 (HW052).

This rule makes Louisiana's regulations on hazardous waste financial assurance to be equivalent to federal regulations (40 CFR 264.140-151 and 265.140-150). A review of state regulations for financial assurance showed that they were inconsistent with the federal regulations.

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 V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including "solid waste" and "hazardous waste," appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

[See Prior Text in A-D.1]

2. A generator who temporarily stores hazardous wastes in an environmentally safe container, tank, or containment building (see LAC 33:V.1109.E) on-site for 90 days or less is exempt from the permitting regulations except for the requirements of LAC 33:V.Chapter 11. Generators must record the date that storage began by proper marking of the container or by other methods acceptable to the administrative authority. Such temporary storage shall be in an environmentally sound manner in compliance with the technical requirements of LAC 33:V.1505, 1509.A, 1513—1517, 1525, and as applicable, with LAC 33:V.1903.A and B, 1905—1913, 1919, 2103—2109.C, and 2111—2115.

[See Prior Text in D.3-M.10]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997).

Chapter 13. Transporters

§1305. Transfer Facility Requirements

[See Prior Text in A]

B. If hazardous wastes from different generators or separate wastes from the same generator become mixed after being accepted by the transporter, the transporter shall also comply with applicable federal or state generator standards unless the transporter shows that the information on the manifests still identifies the hazardous waste.

[See Prior Text in C]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), repromulgated LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997).

Chapter 19. Tanks

§1915. Closure and Post-closure Care

[See Prior Text in A-B]

C. If an owner or operator has a tank system that does not have secondary containment that meets the requirements of LAC 33:V.1907.B-F and is not exempt from the secondary containment requirements in accordance with LAC 33:V.1907.G, then:

[See Prior Text in C.1-D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), amended LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997).

Chapter 37. Financial Requirements

Subchapter A. Closure Requirements

§3707. Financial Assurance for Closure

An owner or operator of each facility must establish financial assurance for closure of the facility. Under this Part, the owner or operator must choose from the options as specified in LAC 33:V.3707.A-F, which choice the administrative authority must find acceptable based on the application and the circumstances.

[See Prior Text in A-A.9]

10. After beginning partial or final closure, an owner or operator, or any other person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the administrative authority. The owner or operator may request reimbursement for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its operating life. Within 60 days after receiving bills for partial or final closure activities, the administrative authority will instruct the trustee to make reimbursements in those amounts as the administrative authority specifies in writing, if the administrative authority determines that the partial or final closure expenditures are in

accordance with the approved closure plan, or otherwise justified. If the administrative authority has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with this Section, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the administrative authority does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * *

[See Prior Text in A.11-C.2]

3. The owner or operator who uses a surety bond to satisfy the requirements of this Section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the administrative authority. This standby trust must meet the requirements specified in Subsection A of this Section except that:

* * *

[See Prior Text in C.3.a-D.5]

6. The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except as provided in Subsection G of this Section.

* * *

[See Prior Text in D.7-D.8]

9. If the owner or operator does not establish alternate financial assurance as specified in this Part, and obtain written approval of such alternate assurance from the administrative authority within 90 days after receipt by both the owner or operator and the administrative authority of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the administrative authority will draw on the letter of credit. The administrative authority may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the administrative authority will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this Part and obtain written approval of such assurance from the administrative authority.

* * *

[See Prior Text in D.10-F.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * *

[See Prior Text in F.1.b-F.1.b.i]

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in Subsection F.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" used in Subsection F.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f)

* * *

[See Prior Text in F.3-F.10.b]

c. If the owner or operator fails to provide alternate financial assurance as specified in this Section and obtain the written approval of such alternate assurance from the administrative authority within 90 days after receipt by the owner or operator and the administrative authority of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

G. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A, B, D, and E of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the current closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanism. A single trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for closure of the facility.

* * *

[See Prior Text in H-I]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997).

Subchapter B. Post-closure Requirements

§3711. Financial Assurance for Post-closure Care

The owner or operator of a hazardous waste management unit subject to the requirements of LAC 33:V.3709 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility

60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. Under this Section, the owner or operator must choose from the options as specified in Subsections A-F of this Section, which choice the administrative authority must find acceptable based on the application and the circumstances.

* * *

[See Prior Text in A-A.4]

5. If the owner or operator establishes a post-closure trust fund after having used one or more alternate mechanisms specified in this Section or in LAC 33:V.4407, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and if annual payments were made according to specifications of this Subsection and LAC 33:V.4407, as applicable.

* * *

[See Prior Text in A.6 - 12.a]

b. the administrative authority releases the owner or operator from the requirements of this Section in accordance with Subsection I of this Section.

* * *

[See Prior Text in B-C.4.b]

5. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination by the administrative authority pursuant to R.S. 30:2025 that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements, or will deposit the amount of the penal sum into the standby trust fund.

* * *

[See Prior Text in C.6-E.8.b]

c. closure is ordered by the administrative authority or a U.S. District Court or other court that can exercise jurisdiction; or

* * *

[See Prior Text in E.8.d-F.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

b. The owner or operator must have:

i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the

current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in LAC 33:V.3711.F.1 refers to the cost estimates required to be shown in paragraphs 1- 4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" used in LAC 33:V.3711.F.1 refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (40 CFR 144.70.f).

* * *

[See Prior Text in F.3-F.11.c]

G. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A, B, D, and E of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, that must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for post-closure care of the facility.

* * *

[See Prior Text in H-I]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1512 (November 1997).

Subchapter D. Insurance Requirements

§3715. Liability Requirements

* * *

[See Prior Text in A-A.1.b]

2. An owner or operator may meet the requirements of this Section by passing a financial test or using the corporate guarantee for liability coverage as specified in Subsections F and G of this Section.

* * *

[See Prior Text in A.3-B.7.c]

C. Request for Variance. If an owner or operator can demonstrate to the satisfaction of the administrative authority that the levels of financial responsibility required by Subsections A and B of this Section are not consistent with the degree and duration of risk associated with treatment, storage, or disposal at the facility or group of facilities, the owner or operator may obtain a variance from the administrative

authority. The request for a variance must be submitted to the administrative authority as part of the application under LAC 33:V.Chapter 5 for a facility that does not have a permit, or pursuant to the procedures for permit modification under LAC 33:V.Chapter 3 for a facility that has a permit. If granted, the variance will take the form of an adjusted level of required liability coverage, such level to be based on the administrative authority's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The administrative authority may require an owner or operator who requests a variance to provide such technical and engineering information as is deemed necessary by the administrative authority to determine a level of financial responsibility other than that required by Subsections A and B of this Section. Any request for a variance for a permitted facility will be treated as a request for a permit modification under LAC 33:V.321.

* * *

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

i. net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by the test; and

ii. tangible net worth of at least \$10 million; and

iii. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the amount of liability coverage to be demonstrated by this test.

b. The owner or operator must have:

i. a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by *Standard and Poor's* or Aaa, Aa, A, or Baa as issued by *Moody's*; and

ii. tangible net worth of at least \$10 million; and

iii. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

iv. assets located in the United States amounting to either at least 90 percent of total assets or at least six times the amount of liability coverage to be demonstrated by this test.

* * *

[See Prior Text in F.2-3]

a. a letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.G. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by LAC 33:V.3707.F, 3711.F, 4403.E, and 4407.E, and liability coverage, he must submit the letter specified in LAC 33:V.3719.G to cover both forms of financial responsibility; a separate letter as specified in LAC 33:V.3719.F is not required;

* * *

[See Prior Text in F.3.b-K]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:486 (April 1993), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1513 (November 1997).

Subchapter F. Financial and Insurance Instruments §3719. Wording of the Instruments

A. A trust agreement for a trust fund as specified in LAC 33:V.3707.A or 3711.A or 4403.A or 4407.A must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

1. Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank" or "a state bank"], the "Trustee."

WHEREAS, the Department of Environmental Quality of the State of Louisiana, an agency of the State of Louisiana, has established certain regulations applicable to the grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility;

WHEREAS, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility identified herein;

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

* * *

[See Prior Text in A.1.Trust Agreement.Section 1- Section 1.(d)]

Section 2. Identification of Facilities and Cost Estimates

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Louisiana Department of Environmental Quality. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. [Note: Standby Trust Agreements need not be funded at the time of execution. In the case of Standby Trust Agreements, Schedule B should be blank but for a statement that the Agreement is not presently funded, but shall be funded by the financial assurance document used by the Grantor in accordance with the terms of that document.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the administrative authority.

* * *

[See Prior Text in A.1.Trust Agreement.Section 4-Section 5]

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this part. In investing, reinvesting, exchanging, selling, and managing the Fund, the trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

A. securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not

be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

C. the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

A. to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

B. to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. to sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

B. to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

D. to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. to compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the administrative authority a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the administrative authority shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

[See Prior Text in A.1.Trust Agreement.Section 11-Section 12]

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the administrative authority, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this part shall be paid as provided in Section 9.

[See Prior Text in A.1.Trust Agreement.Section 14-Section 20]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:V.3719.A.1 as such regulations were constituted on the date first above written.

WITNESSES: GRANTOR:

By:

Its:

(SEAL)

TRUSTEE:

By:

Its:

(SEAL)

THUS DONE AND PASSED in my office in _____, on the ____ day of _____, 19 __, in the presence of _____ and _____, competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading the whole.

NOTARY PUBLIC

2. The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3707.A.2 or 3711.A.2 or 4403.A.2 or 4407.A.2.

STATE OF LOUISIANA

PARISH OF

BE IT KNOWN, that on this ____ day of ____, 19__, before me, the undersigned Notary Public, duly commissioned and qualified within the State and Parish aforesaid, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____, to me well known, who declared and acknowledged that he had signed and executed the foregoing instrument as his act and deed, and as the act and deed of the _____, a corporation, for the consideration, uses and purposes and on terms and conditions therein set forth.

And the said appearer, being by me first duly sworn, did depose and say that he is the ____ of said corporation and that he signed and executed said instrument in his said capacity, and under authority of the Board of Directors of said corporation.

Thus done and passed in the State and Parish aforesaid, on the day and date first hereinabove written, and in the presence of _____ and _____, competent witnesses, who have hereunto subscribed their names as such, together with said appearer and me, said authority, after due reading of the whole.

WITNESSES:

NOTARY PUBLIC

B. Payment Bond. A surety bond guaranteeing payment into a trust fund, as specified in LAC 33:V.3707.B or 3711.B or 4403.B or 4407.B, must be worded as follows, except that

instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Financial Guarantee Bond

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: \$ _____
Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Louisiana Department of Environmental Quality in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, said Principal is required, under the Resource Conservation and Recovery Act (RCRA) as amended and the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., to have a permit in order to own or operate the hazardous waste management facility(ies) identified above; and

WHEREAS, the Principal is required by law to provide financial assurance for closure or closure and post-closure care, as a condition of the permit or interim status; and

WHEREAS, said Principal shall establish a standby trust fund as is required by LAC 33:V.Chapter 37 when a surety bond is used to provide such financial assurance;

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of the facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin final closure is issued by the Secretary, or a court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance as specified in LAC 33:V.Chapter 37, and obtain written approval from the administrative authority of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the administrative authority from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the administrative authority that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the administrative authority.

The Surety(ies) hereby waives notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations, and agrees that no such amendment shall in any way alleviate its obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of notice of cancellation by the Principal and the administrative authority, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies) and to the administrative authority, provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the administrative authority.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond

yearly in accordance with LAC 33:V.Chapter 37, and the conditions of the Hazardous Waste Facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

The Principal and Surety(ies) hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety(ies), that each Surety hereto is authorized to do business in the State of Louisiana, and that the wording of this surety bond is identical to the wording specified in LAC 33:V.3719.B as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

Corporate Sureties

[Name and address]
State of incorporation: _____
Liability Limit: _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate Seal]
[This information must be provided for each co-surety]
Bond Premium: \$ _____

[See Prior Text in C]

D. Letter of Credit. A letter of credit, as specified in LAC 33:V.3707.D or 3711.D or 4403.C or 4407.C must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Standby Letter of Credit

Secretary
Louisiana Department of Environmental Quality
P.O. Box 82263
Baton Rouge, LA 70884-2263
Dear [Sir or Madam]:

We hereby establish our Irrevocable Standby Letter of Credit Number _____ in favor of the Department of Environmental Quality of the State of Louisiana at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of U.S. dollars \$ _____ upon presentation of:

- 1. a sight draft, bearing reference to the Letter of Credit Number _____ drawn by the Secretary or his or her designated representative, together with;
- 2. a statement signed by the Secretary or his or her designated representative, reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq."

This Letter of Credit is effective as of _____, 19____, and shall expire on _____, 19____ [date at least one year later], but such expiration date will be automatically extended for a period of at least one year on the above expiration date [____, 19____] and on each successive expiration date thereafter, unless, at least 120 days before the then current expiration date, we notify both you and [name of owner/operator] by certified mail that we have decided not to extend this Letter of Credit beyond the then current expiration date. In the event we give such notification, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [name of owner/operator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of owner/operator] in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in LAC 33:V.3719.D as such regulations were constituted on the date shown immediately below.

[Signature(s) and Titles of Official(s) of issuing institutions]
[DATE]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

E. A certificate of insurance, as specified in LAC 33:V.3707.E or 3711.E or 4403.D or 4407.D, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Certificate of Insurance for Closure or Post-closure Care

Name and Address of Insurer
(herein called the "Insurer"): _____

Name and Address of Insured
(herein called the "Insured"): _____

Facilities Covered: [List for each facility: EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]

Face Amount: \$ _____

Policy Number: _____

Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of LAC 33:V.3707.E, 3711.E, 4403.D, and 4407.D as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the administrative authority, the Insurer agrees to furnish to the administrative authority a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in LAC 33:V.3719.E as such regulations were constituted on the date shown immediately below and that Insurer is authorized to conduct insurance business in the State of Louisiana.

[Authorized signature for Insurer]

[Name of person signing][Title of person signing]

Signature of witness or notary: _____ [Date]

F. Closure Guarantee. A letter from the chief financial officer, as specified in LAC 33:V:3707.F.3 or 3711.F.3 or 4403.E.3 or 4407.E.3 must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Letter from Chief Financial Officer

Secretary
Louisiana Department of Environmental Quality
P.O. Box 82263
Baton Rouge, LA 70884-2263

Dear [Sir or Madam]:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in LAC 33:V.Chapters 37 and 43.

[Fill out the following five paragraphs. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost as to whether it is for closure or post-closure.]

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure costs is being demonstrated through the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____.

2. This firm guarantees, through the guarantee specified in LAC

33:V.Chapters 37 and 43, financial assurance for closure or post-closure costs at the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____. The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing each relationship to this letter].

3. In states other than Louisiana, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency or to a state through the financial test or any other financial assurance mechanism specified in LAC 33:V.Chapters 37 and 43 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 CFR Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 3711.F.1 or the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 are used.]

Alternative I

- 1. Sum of current closure and post-closure estimates [total of all cost estimates shown in the five paragraphs above]: \$ _____
- *2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]: \$ _____
- *3. Tangible net worth: \$ _____
- *4. Net worth: \$ _____
- *5. Current assets: \$ _____
- *6. Current Liabilities: \$ _____
- 7. Net working capital [line 5 minus line 6]: \$ _____
- *8. The sum of net income plus depreciation, depletion, and amortization: \$ _____
- *9. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.): \$ _____

- | | | |
|--|-------|-------|
| | YES | NO |
| 10. Is line 3 at least \$10 million? | _____ | _____ |
| 11. Is line 3 at least six times line 1? | _____ | _____ |
| 12. Is line 7 at least six times line 1? | _____ | _____ |
| *13. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14. | _____ | _____ |
| 14. Is line 9 at least six times line 1? | _____ | _____ |
| 15. Is line 2 divided by line 4 less than 2.0? | _____ | _____ |
| 16. Is line 8 divided by line 2 greater than 0.1? | _____ | _____ |
| 17. Is line 5 divided by line 6 greater than 1.5? | _____ | _____ |

Alternative II

- 1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above]: \$ _____
- 2. Current bond rating of most recent issuance of this firm and name of rating service: _____

3. Date of issuance of bond: _____
 4. Date of maturity of bond: _____
 *5. Tangible net worth [if any portion of the closure and post-closure cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]: \$ _____
 *6. Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.):
 YES NO
 7. Is line 5 at least \$10 million? _____
 8. Is line 5 greater than six times line 1? _____
 *9. Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 10. _____
 10. Is line 6 at least six times line 1? _____

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.F as such regulations were constituted on the date shown immediately below.

[Signature]
 [Name]
 [Title]
 [Date]

G. Liability Coverage Guarantee. A letter from the chief financial officer, as specified in LAC 33:V.3715.F or 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Secretary
 Louisiana Department of Environmental Quality
 P.O. Box 82263
 Baton Rouge, LA 70884-2263
 Dear [Sir or Madam]:

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in LAC 33:V.Chapter 37 or 43.

[Fill out the following paragraph regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in LAC 33:V.Chapter 37 or 43.

The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapter 37 or 43, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: _____.

The firm identified above is [insert one or more: (1) the direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee _____; or (3) engaged in the following substantial business relationship with the owner or operator _____, and receiving the following value in consideration of this guarantee _____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: _____

2. The firm identified above guarantees, through the guarantee specified in LAC 33:V.Chapters 37 and 43, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: _____

3. In states other than Louisiana, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in LAC 33:V.Chapters 37 and 43. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to the U.S. Environmental Protection Agency or to a state through the financial test or any other financial assurance mechanism in LAC 33:V.Chapters 37 and 43 or equivalent or substantially equivalent state mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: _____

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under the applicable regulations of the Louisiana Department of Natural Resources and is assured through a financial test. The current closure cost estimates as required by LDNR are shown for each facility: _____

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage only for the liability requirements under LAC 33:V.Chapters 37 and 43.]

Part A. Liability Coverage for Sudden and Nonsudden Occurrences

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1 or 4411.F.1 are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated: \$ _____
 *2. Current assets: \$ _____
 *3. Current liabilities: \$ _____
 *4. Net working capital (line 2 minus line 3): \$ _____
 *5. Tangible net worth: \$ _____
 *6. Total assets in the U.S. (required only if less than 90 percent of the firm's assets are located in the U.S.): \$ _____
 YES NO
 7. Is line 5 at least \$10 million? _____
 *8. Is line 4 at least six times line 1? _____
 9. Is line 5 at least six times line 1? _____
 10. Are at least 90 percent of assets located in the U.S.? If not, complete line 11. _____
 11. Is line 6 at least six times line 1? _____

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated: \$ _____
 2. Current bond rating of most recent issuance and name of rating service: _____
 3. Date of issuance of bond: _____
 4. Date of maturity of bond: _____
 *5. Tangible net worth: \$ _____
 *6. Total assets in U.S. (required only if less than 90 percent of assets are located in the U.S.): \$ _____
 YES NO
 7. Is line 5 at least \$10 million? _____
 *8. Is line 5 at least six times line 1? _____

9. Are at least 90 percent of assets located in the U.S.? If not, complete line 10. _____
10. Is line 6 at least six times line 1? _____
- [Fill in Part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-closure Care and Liability Coverage

[Fill in Alternative I if the first criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the first criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used. Fill in Alternative II if the second criteria of LAC 33:V.3707.F.1, 3711.F.1, and 3715.F.1 or if the second criteria of LAC 33:V.4403.E.1 or 4407.E.1 and 4411.F.1 are used.]

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above): \$ _____
2. Amount of annual aggregate liability coverage to be demonstrated: \$ _____
3. Sum of lines 1 and 2: \$ _____
- *4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6): \$ _____
- *5. Tangible net worth: \$ _____
- *6. Net worth: \$ _____
- *7. Current assets: \$ _____
- *8. Current liabilities: \$ _____
9. Net working capital (line 7 minus line 8): \$ _____
10. The sum of net income plus depreciation, depletion, and amortization: \$ _____
- *11. Total assets in the U.S. (required only if less than 90 percent of firm's assets are located in the U.S.):
- | | | |
|--|-------|-------|
| | YES | NO |
| 12. Is line 5 at least \$10 million? | _____ | _____ |
| 13. Is line 5 at least six times line 3? | _____ | _____ |
| 14. Is line 9 at least six times line 3? | _____ | _____ |
- *15. Are at least 90 percent of assets located in the U.S.? If not, complete line 16.
- | | | |
|--|-------|-------|
| 16. Is line 11 at least six times line 3? | _____ | _____ |
| 17. Is line 4 divided by line 6 less than 2.0? | _____ | _____ |
| 18. Is line 10 divided by line 4 greater than 0.1? | _____ | _____ |
| 19. Is line 7 divided by line 8 greater than 1.5? | _____ | _____ |

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above): \$ _____
2. Amount of annual aggregate liability coverage to be demonstrated: \$ _____
3. Sum of lines 1 and 2: \$ _____
4. Current bond rating of most recent issuance and name of rating service: _____
5. Date of issuance of bond: _____
6. Date of maturity of bond: _____
- *7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line): \$ _____
- *8. Total assets in the U.S. (required only if less than 90 percent of assets are located in the U.S.):
- | | | |
|--|-------|-------|
| | YES | NO |
| 9. Is line 7 at least \$10 million? | _____ | _____ |
| *10. Is line 7 at least six times line 3? | _____ | _____ |
| 11. Are at least 90 percent of assets located in the U.S.? If not, complete line 12. | _____ | _____ |
| 12. Is line 8 at least six times line 3? | _____ | _____ |

I hereby certify that the wording of this letter is identical to the wording specified in LAC 33:V.3719.G as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

[See Prior Text in H-L Bond Premium:§]

M. Trust Agreement

1. A trust agreement, as specified in LAC 33:V.3715 and 4411, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Trust Agreement

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this agreement:

a. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

b. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to \$5 million] per occurrence and _____ [up to \$10 million] annual aggregate for sudden accidental occurrences, exclusive of legal defense costs and _____ [up to \$3 million] per occurrence and _____ [up to \$6 million] annual aggregate for nonsudden occurrences exclusive of legal defense costs, except that the Fund is not established for the benefit of third parties for the following:

a. Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

b. Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

c. Bodily injury to:

- i. an employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or
- ii. the spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(a). whether [insert Grantor] may be liable as an employer or in any other capacity; and

(b). to any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in Clauses i and ii above.

d. Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft.

e. Property damage to:

- i. any property owned, rented, or occupied by [insert Grantor];
- ii. premises that are sold, given away, or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;
- iii. property loaned to [insert Grantor];

iv. personal property in the care, custody, or control of [insert Grantor];

v. that particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

[See Prior Text in M.1.Trust Agreement.Section 4 - Section 20]

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in LAC 33:V.3719 as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]

[Signature of Trustee]
Attest:
[Title]
[Seal]

2. The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in LAC 33:V.3715 or 4411.

State of Louisiana
Parish of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.
Witness:

THUS DONE AND SIGNED before me this ____ day of _____, _____, in _____.

NOTARY PUBLIC

[See Prior Text in N-N.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:686 (July 1985), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:47 (January 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1514 (November 1997).

Chapter 43. Interim Status Subchapter E. Groundwater Monitoring §4375. Recordkeeping and Reporting

[See Prior Text in A]

1. keep records throughout the active life of the facility of the analyses required in LAC 33:V.4371.C and E, the associated groundwater surface elevations required in LAC 33:V. 4371.F, and the evaluations required in LAC 33:V.4373.B, and, for disposal facilities, throughout the post-closure care period as well; and

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1520 (November 1997).

Subchapter G. Financial Requirements §4403. Financial Assurance for Closure

By the effective date of these regulations an owner or operator of each facility must establish financial assurance for closure of the facility. He must choose from the options as specified in LAC 33:V.4403.A-E.

[See Prior Text in A-E.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.10; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

[See Prior Text in E.1.b-E.1.b.i]

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [40 CFR 144.70(f)].

* * *

[See Prior Text in E.3-E.10.a.iii]

F. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A-F of this Section, respectively, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for closure of the facility.

* * *

[See Prior Text in G - H]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 14:791 (November 1988), LR 16:219 (March 1990), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1520 (November 1997).

§4407. Financial Assurance for Post-closure Care

An owner or operator of each hazardous waste disposal unit must establish financial assurance for post-closure care of the facility. He must choose from the options as specified in Subsections A-E of this Section.

* * *

[See Prior Text in A-E.1.a]

i. two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.10; and a ratio of current assets to current liabilities greater than 1.5; and

ii. net working capital and tangible net worth each at least six times the sum of the current closure and post-closure costs estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * *

[See Prior Text in E.1.b-E.1.b.i]

ii. tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

iii. tangible net worth of at least \$10 million; and

iv. assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

2. The phrase "current closure and post-closure cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer (see LAC 33:V.3719.F). The phrase "current plugging and abandonment cost estimates" as used in Subsection E.1 of this Section refers to the cost estimates required to be shown in paragraphs 1-4 of the letter from the owner's or operator's chief financial officer [40 CFR 144.70(f)].

* * *

[See Prior Text in E.3-E.11.c]

F. Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Subsection by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in Subsections A, B, C, and D of this Section, respectively, except that it is the combination of mechanisms rather than the single mechanism which must provide financial assurance for an amount at least equal to the current post-closure cost estimate. If an owner or operator uses a trust fund in combination with a surety bond or a letter of credit, he may use the trust fund as the standby trust fund for the other mechanisms. A single standby trust fund may be established for two or more mechanisms. The administrative authority may use any or all of the mechanisms to provide for post-closure care of the facility.

G. Use of a Financial Mechanism for Multiple Facilities. An owner or operator may use a financial assurance mechanism specified in this Subsection to meet the requirements of this Subsection for more than one facility. Evidence of financial assurance submitted to the administrative authority must include a list showing, for each facility, the EPA identification number, name, address, and the amount of funds for post-closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for post-closure care of any of the facilities covered by the mechanism, the administrative authority may direct only the amount of funds designated for that particular facility, unless the owner or operator agrees to the use of additional funds available under the mechanism.

* * *

[See Prior Text in H]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1521 (November 1997).

§4411. Liability Requirements

* * *

[See Prior Text in A-F.1.a]

i. net working capital and tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

- ii. tangible net worth of at least \$10 million; and
- iii. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the amount of liability coverage to be demonstrated by this test.

* * *

[See Prior Text in F.1.b-F.1.b.i]

- ii. tangible net worth of at least \$10 million; and
- iii. tangible net worth at least six times the amount of liability coverage to be demonstrated by this test ; and
- iv. assets located in the United States amounting to either at least 90 percent of his total assets or at least six times the amount of liability coverage to be demonstrated by this test.

* * *

[See Prior Text in F.2-F.3]

a. A letter signed by the owner's or operator's chief financial officer and worded as specified in LAC 33:V.3719.G. If an owner or operator is using the financial test to demonstrate both assurance for closure or post-closure care, as specified by LAC 33:V.3707.F, 3711.F, 4403.E, and 4407.E, and liability coverage, he must submit the letter specified in LAC 33:V.3719.G to cover both forms of financial responsibility; a separate letter as specified in LAC 33:V.3719.F is not required.

* * *

[See Prior Text in F.3.b-K]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 18:723 (July 1992), repromulgated LR 19:627 (May 1993), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1521 (November 1997).

Chapter 49. Lists of Hazardous Wastes
§4901. Category I Hazardous Wastes

* * *

[See Prior Text in A-B.3]

a. Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of Subsection B.3.b and c of this Section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

* * *

[See Prior Text in B.3.b-B.3.b.iv]

c. The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

- i. the name and address of the facility;
- ii. formulations previously used and the date on which their use ceased in each process at the plant;
- iii. formulations currently used in each process at the plant;
- iv. the equipment cleaning or replacement plan;
- v. the name and address of any persons who conducted the cleaning and replacement;

vi. the dates on which cleaning and replacement were accomplished;

vii. the dates of sampling and testing;

viii. a description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

ix. a description of the tests performed, the date the tests were performed, and the results of the tests;

x. the name and model numbers of the instrument(s) used in performing the tests;

xi. QA/QC documentation; and

xii. the following statement signed by the generator or his authorized representative:

"I certify under penalty of law that all process equipment required to be cleaned or replaced under LAC 33:V.4901.B was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment."

* * *

[See Prior Text in C-G.Table 6]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), amended by the Office of Waste Services Hazardous Waste Division, LR 23:1522 (November 1997).

H. M. Strong
 Assistant Secretary

9711#041

RULE

Department of Environmental Quality
Office of Water Resources

Louisiana Pollutant Discharge Elimination System
 (LPDES) Program (LAC 33:IX.Chapter 23)(WP025)

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 Water Pollution Control Division regulations, LAC 33:IX.Chapter 23 (WP025).

The rule makes corrections to erroneous citations. Additionally, reference to EPA regional administrator has been changed to reflect state authority in the definition of

"new discharger." Language has also been deleted at LAC 33:IX.2407.C that applies to EPA only.

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 IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Subchapter A. Definitions and General Program Requirements

§2311. Purpose and Scope

Scope of the LPDES Permit Requirement

* * *

[See Prior Text in A.1 - 3]

4. The state administrative authority may designate any person subject to the standards for sewage sludge use and disposal as a treatment works treating domestic sewage as defined in LAC 33:IX.2313, where he or she finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as a treatment works treating domestic sewage shall submit an application for a permit under LAC 33:IX.2331 within 180 days of being notified by the state administrative authority that a permit is required. The state administrative authority's decision to designate a person as a treatment works treating domestic sewage under this Paragraph shall be stated in the fact sheet or statement of basis for the permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:1523 (November 1997).

§2313. Definitions

The following definitions apply to LAC 33:IX.Chapter 23.Subchapters A - G. Terms not defined in this Section have the meaning given by the CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

* * *

[See Prior Text]

New Discharger—any building, structure, facility, or installation:

* * *

[See Prior Text in (a) - (c)]

(d). which has never received a finally effective permit for discharges at that site. This definition includes an indirect discharger which commences discharging into waters of the state after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling

rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a site under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the EPA regional administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the state administrative authority shall consider the factors specified in LAC 33:IX.2749.A.1-10. An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a new discharger only for the duration of its discharge in an area of biological concern.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:722 (June 1997), LR 23:1523 (November 1997).

§2321. Continuation of Expiring Permits

A. When DEQ is the permit-issuing authority, the conditions of an expired permit continue in force under R.S. 30:2023(C), R.S. 49:961(B), and LAC 33:IX.2301.D.4 until the effective date of a new permit (see LAC 33:IX.2425) if:

* * *

[See Prior Text in A.1 - C.4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:1523 (November 1997).

Subchapter C. Permit Conditions

§2361. Establishing Limitations, Standards, and Other Permit Conditions

In addition to the conditions established under LAC 33:IX.2359.A, each LPDES permit shall include conditions meeting the following requirements when applicable.

* * *

[See Prior Text in A - 1.1.b]

c. Other measurements as appropriate including pollutants in internal waste streams under LAC 33:IX.2363.H; pollutants in intake water for net limitations under LAC 33:IX.2363.G; frequency, rate of discharge, etc., for noncontinuous discharges under LAC 33:IX.2363.E; pollutants subject to notification requirements under LAC 33:IX.2357.A; and pollutants in sewage sludge or other monitoring as specified in 40 CFR part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d) of the CWA.

* * *

[See Prior Text in 1.1.d - Q]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1523 (November 1997).

Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits

§2383. Modification or Revocation and Reissuance of Permits

When the state administrative authority receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see LAC 33:IX.2355), receives a request for modification or revocation and reissuance under LAC 33:IX.2407, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in Subsections A and B of this Section for modification or revocation and reissuance or both exist. If cause exists, the state administrative authority may modify or revoke and reissue the permit accordingly, subject to the limitations of LAC 33:IX.2407.B and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term (see LAC 33:IX.2407.B.2). If cause does not exist under this Section or LAC 33:IX.2385, the state administrative authority shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in LAC 33:IX.2385 for minor modifications the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in LAC 33:IX.Chapter 23.Subchapters E and F followed.

[See Prior Text in A - B.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997).

Subchapter E. General Program Requirements

§2407. Modification, Revocation and Reissuance, or Termination of Permits

[See Prior Text in A - B.3]

C. If the state administrative authority tentatively decides to terminate a permit under LAC 33:IX.2387 or 2769, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under LAC 33:IX.2409.

[See Prior Text in D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), LR 23:1524 (November 1997).

Subchapter K. Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the Act

§2503. Criteria

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

D. Factors which may be considered fundamentally different are:

1. the nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[Comment: (1). In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA. (2). Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under LAC 33:IX.2503.A. Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on §402(a)(1) of the Act. See LAC 33:IX.2469.C.2.]

[See Prior Text in D.2 - F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:1524 (November 1997).

Linda Korn Levy
Assistant Secretary

9711#056

RULE

**Department of Health and Hospitals
Board of Dentistry**

Advertising and Soliciting by
Dentists (LAC 46:XXXIII.301)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.301, "Advertising and Soliciting by Dentists." No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

§301. Advertising and Soliciting by Dentists

A. - F. ...

G. Advertising through or with Referral Services. Any dentist who advertises by, through or with a referral service shall be held responsible for the contents of such advertising, and all advertisements shall comply with this rule.

H. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, December 1970, amended 1971, amended and promulgated LR 13:179 (March 1987), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21:567 (June 1995), LR 22:23 (January 1996), LR 22:1215 (December 1996), repromulgated LR 23:199 (February 1997), amended LR 23:1524 (November 1997).

C. Barry Ogden
Executive Director

9711#025

RULE

Department of Health and Hospitals Board of Dentistry

Dental Practice Address
(LAC 46:XXXIII.304)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.304, "Address of Dental Practice." No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

§304. Address of Dental Practice

A. Each dentist shall inform the Louisiana State Board of Dentistry of all office addresses at which the dentist practices dentistry within 30 days of his commencing practice at each location.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 15:965 (November 1989), amended LR 18:739 (July 1992), LR 23:1525 (November 1997).

C. Barry Ogden
Executive Director

9711#026

RULE

Department of Health and Hospitals Board of Dentistry

Dental Services at Locations Other Than
Dental Office (LAC 46:XXXIII.314)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has adopted LAC 46:XXXIII.314, "Dental Services at Locations Other Than Dental Office," in order to ensure that dental services are performed in a clean and sanitary facility and that appropriate follow-up emergency care is being provided.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

§314. Dental Services at Locations Other Than Dental Office

A. When dental services are provided by dental health care providers to patients in locations other than the dental health care provider's dental office, the dental health care provider shall:

1. provide the exact street address or location of each and every place within the state where the dental health care provider provides dental services and notify the board, in writing, within 10 days of each addition or deletion of any such place; and maintain a schedule of all dates and times such services were provided at each location other than the dentist's primary office;

2. insure that all dental services are provided in a clean, sanitary place, and in compliance with federal Centers for Disease Control guidelines;

3. certify that there is a written agreement for emergency follow-up care for patients treated at said locations and that said agreement includes identification of and arrangements for treatment in a dental facility which is permanently established in the immediate area.

B. If the dental services provided by the dental health care provider are in a nursing facility or other long-term health care facility, the dental health care provider must obtain from the director a certification, in writing, on a form to be provided by the board, that the facility has entered into the written agreement for emergency follow-up care referenced in §314.A.3 and that all dental services are being provided in a safe and sanitary facility, and in compliance with federal Centers for Disease Control guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 23:1525 (November 1997).

C. Barry Ogden
Executive Director

9711#028

RULE

**Department of Health and Hospitals
Board of Dentistry**

Dentists and Hygienists—Continuing Education (LAC 46:XXXIII.1611 and 1613)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8) and (13), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.1611, "Continuing Education Requirements for Relicensure of Dentists," and LAC 46:XXXIII.1613, "Continuing Education Requirements for Relicensure of Dental Hygienists." No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 16. Continuing Education Requirements

§1611. Continuing Education Requirements for Relicensure of Dentists

A. - I. ...

J. Dentists who are on staffs of hospitals accredited by the Joint Commission on Accreditation of Health Care Organizations may receive continuing education credit for those continuing education courses provided by said hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997).

§1613. Continuing Education Requirements for Relicensure of Dental Hygienists

A. - I. ...

J. Dental hygienists who are on staffs of hospitals accredited by the Joint Commission on Accreditation of Health Care Organizations may receive continuing education credit for those continuing education courses provided by said hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR: 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997).

C. Barry Ogden
Executive Director

9711#034

RULE

**Department of Health and Hospitals
Board of Dentistry**

Dentists and Hygienists—Fees for Licenses, Permits, and Examinations (LAC 46:XXXIII.415 and 419)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq.; the Dental Practice Act, R.S. 37:751 et seq.; and particularly R.S. 37:760(8) and R.S. 37:795, the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.415 and 419, "Licenses, Permits, and Examinations." No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 4. Fees and Costs

Subchapter C. Fees for Dentists

§415. Licenses, Permits, and Examinations

For processing applications for licensure, permits, and examinations, the following fees shall be payable in advance to the board:

1.	Examination and licensing of dental applicant	\$300
2.	Temporary dental license	\$100
3.	Issuance of a restricted dental license (excluding advanced education students and dental residents)	\$100
4.	Annual renewal fee for dental license	\$150
5.	Biennial renewal fee for dental license	\$300
6.	Annual renewal fee for restricted dental license (excluding advanced education students and dental residents)	\$150
7.	Replacement or duplicate dental license, certificate, temporary permit	\$50
8.	Delinquency fee in addition to renewal fee for any dental license	\$250
9.	Reinstatement of a license which has been suspended, revoked or which has lapsed by nonrenewal	\$500
10.	Restricted dental license, advanced education students and dental residents:	
	a. for period July 1-December 31	\$100
	b. for each full year (January 1-December 31) thereafter	\$200
	c. for period January 1-June 30	\$100
11.	Dental application and licensure by credentials (nonrefundable)	\$2,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), R.S. 37:768, R.S. 37:679, and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997).

**Subchapter D. Fees for Dental Hygienists
§419. Licenses, Permits, and Examinations**

For processing applications for licensure, permits, and examinations, the following fees shall be payable in advance to the board:

1. Examination and licensing of dental hygienist applicant	\$175
2. Temporary dental hygienist permit	\$100
3. Annual renewal fee for dental hygienist license	\$50
4. Biennial renewal fee for dental hygienist license	\$100
5. Replacement or duplicate dental hygienist license, certificate, temporary permit	\$50
6. Delinquency fee in addition to renewal fee for any dental hygienist license	\$100
7. Reinstatement of a dental hygienist license which has been suspended, revoked, or which has lapsed by nonrenewal	\$250
8. Dental hygiene application and licensure by credentials (nonrefundable)	\$800

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8), R.S. 37:678, R.S. 37:679, and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1527 (November 1997).

C. Barry Ogden
Executive Director

9711#032

RULE

**Department of Health and Hospitals
Board of Dentistry**

**Health Care Provider Financial Interest
Disclosure (LAC 46:XXXIII.316)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., particularly R.S. 37:760(8), and under the mandate of R.S. 37:1744, the Department of Health and Hospitals, Board of Dentistry has adopted LAC 46:XXXIII.316, "Disclosure of Financial Interest by

Referring Dental Health Care Provider." No preamble has been prepared.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

**§316. Disclosure of Financial Interest by Referring
Dental Health Care Provider**

A. This rule is authorized and mandated by R.S. 37:1744 and a violation of §316 will constitute a violation of either R.S. 37:776(A)(24) or R.S. 37:777(18).

B. No dental health care provider shall make referrals outside the same group practice as that of the referring dental health care provider to any other health care provider, licensed health care facility, or provider of health care goods and services including, but not limited to, providers of clinical laboratory services, diagnostic services, medicinal suppliers, and therapeutic services when the referring dental health care provider has a financial interest served by such referrals, unless in advance of any such referral, the referring dental health care provider discloses to the patient, in writing, the existence of such financial interest.

C. *Financial Interest*—a significant ownership or investment interest established through debt, equity, or other means and held by a dental health care provider or a member of a dental health care provider's immediate family, or any form of direct or indirect remuneration for referral.

D. It shall be a violation of this §316 for any licensee to enter into any arrangement or scheme, including cross-referral arrangements, if the licensee knows, or should know, that he or she has a principal purpose of ensuring referrals by the licensee to a particular entity, which referral, if made directly by the licensee, would be a violation of §316.

E. Notwithstanding any other law to the contrary, any dental health care provider who violates the provisions of §316 shall refund all such sums received in payment for the goods and services furnished or rendered without disclosure of financial interest. Such a refund shall be paid to the individual patient, third-party payor, or other entity which made the payment.

F. Any violation of §316 constitutes grounds for the suspension or revocation of a license in addition to any other fines or restrictions on a dental license commensurate with the circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1744.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 23:1527 (November 1997).

C. Barry Ogden
Executive Director

9711#029

RULE

**Department of Health and Hospitals
Board of Dentistry**

Licensure by Credentials (LAC 46:XXXIII.306)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.306, "Requirement of Applicants for Licensure by Credentials." No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

**§306. Requirements of Applicants for Licensure by
Credentials**

A. Before any applicant is awarded a license according to his/her credentials in lieu of an examination administered by the board, said applicant shall provide to the board satisfactory documentation evidencing:

1. ...

2. current possession of a nonrestricted license in another state as defined in R.S. 37:751(L); and

3. that while possessing a nonrestricted license in another state has been in active practice or full-time dental education for a minimum of three years immediately prior to applying for licensure; or while possessing a nonrestricted license in another state has completed a two-year general dentistry residency program or successfully completed a residency program in one of the board recognized dental specialties as defined in §301;

4. ...

5. has not failed the clinical examination of the Louisiana State Board of Dentistry within the last seven years;

6. - 20. ...

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997).

C. Barry Ogden
Executive Director

9711#027

RULE

**Department of Health and Hospitals
Board of Dentistry**

**Motions for Continuance of
Hearing (LAC 46:XXXIII.915)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.915, "Motions for Continuance of Hearing." No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Professions

Chapter 9. Formal Adjudication

§915. Motions for Continuance of Hearing

A. A motion for continuance of hearing shall be filed within the delay prescribed by §913 of these rules, provided that the board may accept the filing of a motion for continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of prehearing motions.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (4), (5), and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:1319 (October 1993), amended LR 23:1528 (November 1997).

C. Barry Ogden
Executive Director

9711#033

RULE

**Department of Health and Hospitals
Board of Dentistry**

Restricted Licensees (LAC 46:XXXIII.105)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.105, "Requirements of Restricted Licensees." No preamble has been prepared.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XXXIII. Dental Health Professions

Chapter 1. General Provisions

§105. Restricted Licensees

A. All applicants for a restricted license must successfully complete the Louisiana State Board of Dentistry examination in jurisprudence prior to issuance of said license, except those licenses issued for less than one year.

B. - E. ...

F. Part-time faculty of the LSU system shall be exempt from the licensure requirements of §105.B and C. However, part-time faculty in the LSU system shall be required to successfully complete the examination in jurisprudence as required in §105.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 21:571 (June 1995), amended LR 22:23 (January 1996), LR 23:1529 (November 1997).

C. Barry Ogden
Executive Director

9711#024

RULE

Department of Health and Hospitals
Board of Dentistry

Term of License; Renewal
(LAC 46:XXXIII.409)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.409, "Term of License; Renewal." No preamble has been prepared.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XXXIII. Dental Health Professions

Chapter 4. Fees and Costs

Subchapter A. General Provisions

§409. Term of License; Renewal

All licenses shall be renewed annually or biennially and will expire on December 31 of each calendar year of the renewal period. All renewal license applications are to be mailed by the board to licensed dentists and dental hygienists at their last known mailing address as indicated in the board files.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 23:1529 (November 1997).

C. Barry Ogden
Executive Director

9711#030

RULE

Department of Health and Hospitals
Board of Veterinary Medicine

Appeals and Review (LAC 46:LXXXV.105)

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.105.B in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part LXXXV. Veterinarians

Chapter 1. Board of Veterinary Medicine

§105. Appeals and Review

A. ...

B. Persons Aggrieved by a Decision of the Board

1. - 3. ...

4. The party requesting the appeal shall pay all costs incurred by the board for review and appeal proceedings called in accordance with §105, and such costs shall include, but not be limited to, board member expenses, court reporter fees, investigative fees, attorney's fees, and administrative costs.

C. ...

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 8:65 (February 1982), amended LR 19:345 (March 1993), LR 23:1529 (November 1997).

Charles B. Mann
Executive Director

9711#001

RULE

Department of Revenue
Sales Tax Division

Sales Tax Return—Quarterly Filing (LAC 61:I.4351)

Under the authority of R.S. 47:306 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Sales Tax

Division has amended LAC 61:I.4351.B.1 to require sales taxpayers whose average tax liability is less than \$100 per month to file quarterly tax returns, and to allow taxpayers whose average tax liability is less than \$250 per month the option to file quarterly tax returns.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 43. Sales and Use Tax

**§4351. Returns and Payment of Tax, Penalty for
Absorption of Tax**

* * *

B. Exceptions. Not all dealers are required to file returns on a monthly basis.

1. Upon registration, all dealers are required to file monthly returns. After the dealer has operated for a few months, and it is determined that the amount of tax liability averages less than \$100 per month, the dealer will be notified and required to file quarterly returns. The secretary may offer the option of quarterly filing to other dealers whose liabilities average less than \$250 per month. Application to file quarterly is not necessary, as notification is automatic once a determination is made by the secretary that such a filing procedure is in order. Quarterly returns should be filed on or before the twentieth day of the first month of the next succeeding quarter. Irregular sales tax returns and use tax returns should be filed on or before the twentieth day of the month following the month in which the taxable transaction occurred. The returns should be prepared in a manner that will enable the secretary to ascertain the correctness of the tax computed to be due. Accordingly, each line of the tax return should be completed, and all amounts not taxable should be identified.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 22:852 (September 1996), amended by the Department of Revenue, Sales Tax Division, LR 23:1530 (November 1997).

John Neely Kennedy
Secretary

9711#003

RULE

**Department of Treasury
Housing Finance Agency**

**Homeownership Housing Program
(LAC 71:II.Chapter 3)**

In accordance with R.S. 49:950 et seq., the Housing Finance Agency has adopted the following rule governing the Community Housing Development Organizations (CHDO) Homeownership Housing Program (Revolving Loan Pool).

The purpose of this rule is to govern the allocation and award of the funds under the program.

The Housing Finance Agency (the "agency") has adopted the form of the HOME project summary application package for the CHDO Homeownership Housing Program (Revolving Loan Pool). The following rule and policies govern the allocation and award of the funds under the program.

Title 71

TREASURY

Part II. Housing Finance Agency

**Chapter 3. CHDO Homeownership Housing Program
(Revolving Loan Pool)**

§301. General

A. The CHDO Homeownership Housing Program is being established by the agency to encourage Community Housing Development Organizations (CHDO) to serve as developers or sponsors in the construction, reconstruction and/or the acquisition-rehabilitation of not more than 20 buildings consisting of not more than one single-family housing unit for purchase by households at or below 80 percent of the area median income for the parish within which the housing units are located.

1. The single-family housing units are to develop in phases not exceeding five units per phase.

2. All units must be constructed or rehabilitated in accordance with the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926.

3. Newly constructed units must meet the current edition of the *Model Energy Code* published by the Council of American Building Officials.

B. The Louisiana Housing Finance Agency (the "agency") will not accept applications for projects to be located in other participating jurisdictions as listed below:

1. city of Alexandria;
2. city of Shreveport;
3. city of Kenner;
4. East Baton Rouge Parish (with exception of cities of Baker and Zachary);
5. city of Lafayette;
6. city of Lake Charles;
7. Jefferson Parish;
8. city of Monroe;
9. St. Charles Parish;
10. city of New Orleans; and
11. Terrebonne Parish.

C. HOME funds will be made available to CHDOs in a revolving loan pool to fund up to five phases and no more than five units in any one phase.

D.1. Eligible borrowers must qualify to purchase housing units under the CHDO Homeownership Housing Program by evidencing an ability to qualify for a mortgage loan under the agency's HOME/MRB program.

2. The HOME/MRB program of the agency will serve as a source of take-out financing for all units under the CHDO Homeownership Housing Program. Developers will receive an appropriate reservation of funds under the HOME/MRB program for take-out financings.

3. All housing units under the CHDO Homeownership Housing Program must qualify under FHA guidelines for minimum property standards.

E.1. The CHDO Homeownership Housing Program is available for the rehabilitation of substandard housing units for eligible borrowers who currently own their own homes only if such homes require and will undergo qualified rehabilitation.

2. If a CHDO desires to include qualified rehabilitation as part of this project summary application, evidence must be submitted prior to the commitment of any HOME funds to the rehabilitation of the housing unit that:

- a. the housing unit is substandard and will be rehabilitated to satisfy minimum HQS;
- b. the rehabilitation of the housing unit satisfies the requirements of a qualified rehabilitation; and
- c. the cost of the rehabilitation and any existing mortgage debt may be refinanced under the agency's HOME/MRB program. All units must qualify under FHA's minimum property standards.

F. HOME funds will be allocated to projects consisting of either:

1. single-family units in which each housing unit is located on a single lot and in which each housing unit and lot may be purchased by an eligible borrower; or
2. if an eligible borrower currently occupies the housing unit, the rehabilitation of the housing unit for the eligible borrower satisfies the conditions for a qualified rehabilitation and financing under the agency's HOME/MRB program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1530 (November 1997).

§303. Definitions

Abandoned—a housing unit which has been certified by the developer/owner and the local jurisdiction within which the housing unit is located that the unit has been vacant for at least 18 months.

Accessible—a site, building, facility, or portion thereof that complies with the Uniform Federal Accessibility Standards and that can be approached, entered, and used by physically disabled people.

Adaptable—the ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability.

Application—the CHDO Homeownership Housing Program (Revolving Loan Pool) HOME project summary.

Appraised Value—an appraisal by an individual or firm which is acceptable to FHA, VA, RECD, FNMA or the PMI insurer, as applicable, subject to the right of the issuer to further limit the pool of acceptable individuals or firms.

Builder—the general contractor or any other entity executing a contract with the developer to construct and/or rehabilitate a housing unit.

Builder Profit Fee Base—line 49 of the estimate and certificate of actual cost certified in accordance with Generally Accepted Accounting Principles by an independent certified public accountant as having been incurred and reduced by any general overhead (line 44).

CHDO—a Community Housing Development Organization as defined at 24 CFR 92.2 of the federal regulations.

Debarred Developer—any developer who is sanctioned or prohibited from participating in any housing program sponsored by any federal agency or by any state or local government or by any instrumentality of a federal, state or local government.

Developer—any person or entity (including persons or entities which are related to or have an identity of interest with such person or entity) which owns or develops a project, including any general partner of a partnership, any builder related to or having an identity of interest with the person or entity which owns or develops the project and any consultant receiving any fee or compensation to help develop a project.

Developer Fee—any profit or income realized by the developer in connection with the development of the project.

Developer Fee Base—the development costs of a project reduced by any acquisition costs and all developer fees (including builder profit and overhead when there is an identity of interest between the builder and the developer).

Development Costs—the capitalized costs of a building certified in accordance with generally accepted accounting principles by an independent certified public accountant as having been incurred as of the placed-in service date of the building.

Elderly Household—a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Eligible Borrower—any person having an ownership interest in the residential housing unit:

1. who is expected to principally and permanently live in the residence being financed within a reasonable period of time (not to exceed 60 days) following the closing of the mortgage loan;

2. who is primarily or secondarily liable on the mortgage and has, in the case of a conventional mortgage loan, received home buyer training from a FNMA certified home buyer training program;

3. whose annualized monthly income does not exceed the maximum permissible household income as set forth in Exhibit III of this CHDO homeownership financing program HOME project summary application, as may be amended from time to time;

4. who is a first-time home buyer; provided, however, that for purposes of this definition, the term *eligible borrower* shall not include a mere cosigner of the mortgage loan who does not have an ownership interest in the residential housing unit being financed pursuant to such mortgage loan.

Existing Housing—housing units which have previously been occupied.

FNMA—the Federal National Mortgage Association.

First-Time Home Buyer—a mortgagor, other than a mortgagor with respect to a qualified rehabilitation loan, who has not had a present ownership interest in a residence at any time during the three-year period ending on the date the mortgage is executed, or a mortgagor who is the first resident of a residence following the completion of a qualified rehabilitation of the residence.

Governmental Assistance—includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit tax benefit, or any other form of direct or indirect assistance from

the federal, state or local government for use in, or in connection with, a specific housing project.

Handicapped Equipped Units—units which are accessible and in which certain building spaces and elements, such as kitchen counters, sinks, and grab bars have been added or attached so as to accommodate the needs of a handicapped household.

Handicapped Household—a household composed of one or more persons at least one of whom is considered to have a physical, mental or emotional impairment which:

1. is expected to be of long-continued and indefinite duration;

2. substantially impedes the ability to live independently; and

3. is of such a nature that such ability could be improved by more suitable housing conditions. A person shall be considered handicapped if:

a. such person has a developmental disability as defined in Section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 60001(7)]; or

b. such person is infected with the Human Acquired Immunodeficiency Virus (HIV) who is disabled as a result of infection with the HIV; or

c. such person has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.

Hard Costs—line 49 of the estimate and certificate of actual costs.

HOME/MRB Program—the agency's program for financing mortgage loans with a combination of HOME funds and proceeds of mortgage revenue bonds.

Home Buyer Training Program—a program (other than a self-instruction program) recognized by FNMA or the agency for first-time home buyers and which is provided by independent third-party contractors or by a CHDO authorized to provide first-time home buyer training.

HQS Standards—the Housing Quality Standards promulgated in HUD regulations at 24 CFR 882.109, including the basic "performance requirements" with respect to the following:

1. sanitary facilities;
2. food preparation and storage space;
3. space and security;
4. thermal environment;
5. illumination and electricity;
6. structure and materials;
7. interior air quality;
8. water supply;
9. lead-based paint;
10. access;
11. site and neighborhood; and
12. sanitary condition.

HUD—the U.S. Department of Housing and Urban Development.

Independent Qualified Housing Consultant—a professional housing consultant who has no identity of interest with any builder or developer in any state and who, by virtue of academic training, licensing and/or experience, is a

recognized expert skilled in the requirements of conducting a market survey and demand study.

Lender—a financial institution that is participating as a lender under the agency's HOME/MRB program.

Local Nonprofit Sponsor—a Section 501(c)(3) or 501(c)(4) organization in which not more than 15 percent of the members of the governing board are domiciled outside the service area of the nonprofit and at least 75 percent of the governing board are domiciled within the market area of the project or is a state-certified Community Housing Development Organization (CHDO) with a service area encompassing the market area of the project.

Market Area—in rural areas or municipalities with a total population of less than 75,000, an area encompassing at least the parish within which the project is located; and in municipalities of 75,000 or more, an area encompassing only the municipality if the housing consultant certifies that such a limitation is appropriate in view of demographic and mobility factors permitting the limitation of the market areas only to the municipality.

Maximum Permissible Acquisition Cost Limits—the applicable amount set forth in Exhibit II of the HOME project summary application as updated from time to time by the issuer.

Maximum Permissible Household Income Limits—with respect to an eligible borrower acquiring a residential housing unit in a parish, the applicable limits for such parish set forth in Exhibit III of the HOME project summary application as updated from time to time by the issuer.

Maximum Sales Price—the FHA 203(b) mortgage insurance limits for the area within which the project is located.

Minimum HQS—

1. the Section 8 Minimum Housing Quality Standards at 24 CFR 882.109 and all applicable state and local codes (including the *Southern Building Code*), rehabilitation standards, ordinances and zoning ordinances,

2. with respect to new construction, the current edition of the *Model Energy Code*, and

3. with respect to substantially rehabilitated housing, the cost-effective energy conservation and effectiveness standards in 24 CFR part 39.

Minimum Property Standards—the Minimum Property Standards in 24 CFR 200.925 or 200.926 or MPS.

New Construction—housing units which have not previously been occupied.

Phase—the construction of not more than the lesser of five units or 20 percent of all the units proposed in the application.

Pre-Qualified Applicant—a prospective eligible borrower who has completed a home buyer training program.

Qualified Rehabilitation—any rehabilitation of a building occupied by an owner prior to the beginning of rehabilitation and certified by a CHDO on Exhibit IV of the HOME project summary application as satisfying the following conditions:

1. there is a period of at least 20 years between the date on which the building was first used (for residential or commercial purposes) and the date on which the physical work on such rehabilitation begins;

2. in the rehabilitation process:

- a. 50 percent or more of the existing external walls of such building are retained in place as external walls;
 - b. 75 percent or more of the existing external walls of such building are retained in place as internal or external walls; and
 - c. 75 percent or more of the existing internal structural framework of such building is retained in place; and
3. the expenditures for such rehabilitation are in an amount at least equal to 25 percent of the eligible borrower's adjusted basis (for federal income tax purposes) in the residence.

For purposes of Paragraph 3, the eligible borrower's adjusted basis shall be determined as of the completion of the rehabilitation or, if later, the date on which the eligible borrower acquires the residence.

RD—the Rural Development Division of the U.S. Department of Agriculture.

RD Target Area—an area designated in writing by Rural Development of the U.S. Department of Agriculture as a priority area for financing housing under the 515 Housing Program.

Replacement Cost—with respect to a project involving substantial rehabilitation, the cost of new construction of a project with identical unit and square footage configuration at the site.

Scattered Site—a project consisting of multiple buildings containing housing units provided that each building is located on a single lot and provided further that each building may not contain more than one housing unit.

Substandard—any housing unit which does not satisfy the HQS standards and which requires substantial rehabilitation.

Substantial Rehabilitation—any rehabilitation in which the hard costs equal or exceed \$15,000 per unit or in which the rehabilitation satisfies the requirements of a qualified rehabilitation.

Total Development Cost—development costs plus the cost of land.

Townhouse Units—a single-family housing unit which shares a common wall with another single-family housing unit but which is located on land to which title is transferred to the homeowner.

Vacant—a housing unit which is certified by the CHDO/owner and the local jurisdiction to have not been occupied for a period of at least 90 days, and which is reasonably expected to remain vacant for an indefinite duration because the unit is substandard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1531 (November 1997).

§305. Application Submission

Applicants wishing to receive a commitment of 1998 HOME funds must submit one original HOME project summary-CHDO Homeownership Housing Program application plus two copies, along with a nonrefundable application fee computed in accordance with the fee schedule below:

1. Application Fee	\$1,000
2. Analysis Fee*	\$1,000
3. Cost Certification Audit Fee**	\$2,500

* If a second analysis is necessary, only one-half of the analysis fee will be charged.

** Only if applicant does not contract with independent CPA to perform cost certification audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1533 (November 1997).

§307. Application Review, Evaluation and Selection

A. Applications will be reviewed by agency staff only upon submission of the application (including all appendices), appropriate application fee, and accompanying submissions.

B. Applications will generally be evaluated to ensure that the application package is complete.

C. Incomplete applications will be returned to the applicant and will be processed by the agency only upon resubmission of a completed application package prior to the next application deadline and receipt of the reprocessing fee.

D. Applications must score at least 80 points to receive a commitment of HOME funds under the CHDO Homeownership Housing Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1533 (November 1997).

§309. Maximum Home Fund Allocations

A. No project will be allocated home funds under the CHDO Homeownership program in excess of \$200,000.

B. No related persons, entities, principals thereof or agents thereof having an identity of interest shall be allocated HOME funds under the CHDO Homeownership Housing Program in excess of \$200,000.

1. Developer fees, builder's profit and builder's overhead shall not exceed the amount permitted under HUD's administrative guidelines on subsidy layering without approval of the agency.

2. The maximum amount of HOME funds allowable per project is the lesser of \$200,000 or 85 percent of total development cost of units proposed in any phase of the project proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1533 (November 1997).

§311. Implementation Guidelines and Processing Restrictions and Procedures

A. Implementation Guidelines. All projects must be feasible and viable. The project must satisfy the following implementation guidelines:

1. HOME funds will be allocated only to fill the gap between other sources of funds available to the project and the required uses of funds in the project. Conventional financing or equity must equal at least 15 percent of total development cost for each phase of a project.

2. Neither appraised value nor total development cost plus points and fees paid by or on behalf of the eligible borrower under the HOME/MRB program may exceed the maximum permissible acquisition cost for single-family units for the area within which the unit is located.

3. Maximum HOME funds budgeted to develop a unit may not exceed 85 percent of the total development cost per unit during the construction period for any phase of development.

4. All projects must be scattered site or consist of townhouse units.

5. Developer fees shall not exceed 15 percent of the developer fee base. The combined builder profit and builder overhead shall not exceed 8 percent of the builder profit base.

B. Market Study

1. If the total number of units in a project consists of 16 or more units and the project involves any new construction or the conversion of an existing nonresidential building to residential rental use, a detailed market study dated as of a date no earlier than 90 days prior to the application deadline must be submitted by an independent qualified housing consultant evidencing demand for additional Homeownership units in the market area.

2. The market study must:

a. specify in detail the sources of demand for new Homeownership units by low income households and that such low income households will pay no more than 30 percent of their household income for PITI;

b. contain a confirmation as to the total number of rental units that have received building permits over the 24-month period ending 120 days prior to the application deadline and that the construction and placement in service of such units in the pipeline will not affect the absorption efficiency of the project;

c. document the request for points in the selection criteria for special needs groups, new construction in areas with 95 percent rental occupancy and large families occupying single-family units having four or more bedrooms.

3. In addition to the submission of the market study, the independent qualified housing consultant must execute and submit by the application deadline a certification of demand for new units.

C. Total Development Cost Limitations. No project will be reserved or allocated HOME funds if the total development cost per unit plus points deemed paid by or on behalf of an eligible borrower as specified under the agency's HOME/MRB program exceed the FHA single-family mortgage limits for single-family units within the area which the unit is located.

D. Dollar Per Square Foot Limits. No project will be reserved or allocated HOME funds if the total development cost per square foot exceeds \$75.

E. Developer Fees and Builder Profit Limits

1. Developer fees for a project shall not exceed 15 percent of the developer fee base.

2. Builder profit shall not exceed 6 percent of the builder profit fee base and builder overhead shall not exceed 2 percent of the builder profit fee base unless approved by the agency in connection with projects:

a. without an identity of interest between the developer and the builder; and

b. in which the construction contract was awarded on the basis of a competitive solicitation of qualified contractors.

F. Proposed Sale Price Per Units. No unit in project may be sold for more than the maximum sales price reduced by any fees or points deemed paid by or on behalf of an eligible borrower, as specified under the agency's HOME/MRB program.

G. Appraisals. Appraisals establishing a project's fair market value will be required in connection with all projects financed with HOME funds.

H. Identities of Interest. An identity of interest is construed to exist when:

1. there is any financial interest of the developer in the builder or any financial interest of the builder in the developer;

2. any officer, director or stockholder or partner of the developer is also an officer, director or stockholder or partner of the builder;

3. any officer, director, stockholder or partner of the developer has any financial interest in the developer; or any officer, director, stockholder or partner of the builder has any financial interest in the developer;

4. the developer advances any funds to the builder;

5. the developer supplies and pays, on behalf of the builder, the cost of any architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a developer in connection with its obligations under the construction contract;

6. the developer takes stock or any interest in the builder corporation as consideration of payment;

7. there exists or comes into being any side deals, arrangements, contracts or undertakings entered into or contemplated, thereby altering, amending, or canceling any of the required closing documents, except as approved by the agency;

8. any relationship (e.g., family) existing which would give the builder or developer control or influence over the price of the contract or the price paid to any subcontractor, material supplier or lessor of equipment.

I. Cost Certifications. The agency must review the certification of the certificate of actual cost audited as of the placed-in service date in accordance with Generally Accepted Accounting Principles (GAAP) by an independent certified public accountant.

J. Subsidy Layering Review. Prior to releasing any retainage of HOME funds for a project, a subsidy layering review will be conducted in connection with any project receiving HOME funds.

K. Debarred Developer. No debarred developers may be reserved HOME funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1533 (November 1997).

§313. Accompanying Submissions

Applications must be accompanied by submissions listed below:

1. Affirmative Marketing Procedures. Applicants must indicate in Appendix XIII affirmative marketing requirements and procedures that will be adopted. Such procedures must be in accordance with HUD regulations.

2. Owner's Relocation Plan. Applicants who propose projects involving occupied buildings must include, as Appendix XIV, a relocation plan in the initial application and submit an occupied tenant list and must be in accordance with HUD regulations.

3. Appraisal

a. Applicant must include, as Appendix XV, a copy of any appraisal which was used to estimate the AS-IS and completed value of the project.

b. The appraised value of any unit within the project must be less than or equal to the maximum permissible acquisition cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1534 (November 1997).

§315. Selection Criteria to Award Home Funds to CHDO Homeownership Housing Projects

	POINTS
A. Ratio of Project's Intermediary Cost to Development Costs (See Subsection K for formula to calculate ratio)	
1. Less than or equal to 10%	20 ___
2. More than 10% but less than or equal to 15%	15 ___
3. More than 15% but less than or equal to 20%	10 ___
4. More than 20%	0 ___
B. Project Contains Handicapped Equipped Units	
1. two or fewer units	5 ___
2. three to five units	10 ___
3. six or more units	15 ___
C. Project Serves Large Families Percentage of Units having Four or More Bedrooms	
1. two or fewer units	5 ___
2. three to five units	10 ___
3. six or more units	15 ___
D. Project involves New Construction in Areas with 95% or more residential rental occupancy	25 ___
E. All Units in Project are Vacant or Abandoned or all Units Located in a MRB Targeted Area	25 ___
F. Project to Reconstruct or Rehabilitate Substandard Housing Units to Minimum Property Standards or to construct New Units with Total HOME Funds Per Unit not Exceeding:	
\$ 5,000	50 ___
\$ 15,000	40 ___
\$ 25,000	30 ___
\$ 35,000	20 ___
\$ 45,000	10 ___
G. Economic Development Benefits. Project located in geographic area certified by Department of Economic Development to benefit from location of new facilities or expansion of existing facilities which will generate additional jobs and housing needs.	50 ___

H. Developer Fees (including builder profit and builder overhead when there exists identity of interest between builder and developer) are 10% or less under subsidy layering review guidelines	25 ___
I. Matching Certification Exceeds \$50,000	50 ___
J. Applicant has Submitted List of Pre-qualified Applicants	
1. At least 5 pre-qualified applicants	5 ___
2. At least 10 pre-qualified applicants	10 ___
3. At least 15 pre-qualified applicants	15 ___
4. At least 20 pre-qualified applicants	20 ___
5. At least 25 pre-qualified applicants	25 ___

TOTAL _____

K. Formula to Calculate Ratio of Project's Intermediary Cost to Development Costs

Step 1: Add following amounts from Appendix II

Line II.B (Land Improvements)	\$ ___
Line II.C(ii) (Demolition)	\$ ___
Line II.C(iii) (Rehab or New Construction)	\$ ___

TOTAL \$ ___

Step 2: Add following amounts from Appendix II

Line II.D (Subtotal)	\$ ___
Line II.F (Subtotal)	\$ ___
Line II.G (Subtotal)	\$ ___

TOTAL \$ ___

Step 3: Divide Total of Step 2 by Total of Step 1 and specify percentage _____%

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1535 (November 1997).

§317. CHDO Homeownership Housing Program Home Project Summary Application and Exhibits

The CHDO Homeownership Housing Program Home Project Summary Application and the exhibits thereto (referred to in Chapter 3 of these rules) are available upon request through the Louisiana Housing Financing Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.6.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Housing Finance Agency, LR 23:1535 (November 1997).

V. Jean Butler
President

9711#049

RULE

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

Turkey Hunting Season—1998

In accordance with the notice of intent published in the July 1997 *Louisiana Register*, the Wildlife and Fisheries

Commission hereby amends the regulations on open hunting season dates, bag limits, methods of taking and rules on department-operated wildlife management areas for turkeys. Authority to establish regulations are vested in the commission by §115 of Title 56 of the Louisiana Revised Statutes of 1950.

1998 Turkey Hunting Season Schedule

(Shooting Hours: One-half hour before sunrise to one-half hour after sunset)

Daily limit is one gobbler, three gobblers per season, still hunting only. Use of dogs, baiting, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzle loading shotguns, using shot not larger than Number 2 lead or BB steel shot, and bow and arrow but by no other means. Shooting turkeys from a moving or stationary vehicle is prohibited.

No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. *Baiting* means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys.

A *baited area* is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed.

Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closure.

The Department of Wildlife and Fisheries strongly discourages "feeding" agricultural grains to wild turkeys as this practice increases the risk of birds contracting potentially lethal diseases. Repeatedly placing grain in the same area may expose otherwise healthy birds to disease contaminated soils, grain containing lethal toxins and other diseased turkeys using the same feeding site. Properly distributed food plots (clovers, wheat, millet and chufa) are far more desirable for turkeys and have the added benefit of appealing to a wide variety of wildlife.

It is unlawful to take from the wild or possess in captivity any live wild turkeys or their eggs. No pen-raised turkeys from within or without the state shall be liberated (released) within the state.

All licensed turkey hunters are required to have a turkey stamp in their possession while turkey hunting in addition to basic and big game licenses.

1998 Turkey Hunting Season

Open Only in the Following Areas

Area A

March 21-April 26

All of the following parishes are open:

East Baton Rouge, East Feliciana, Grant, Livingston, Natchitoches, Rapides, St. Helena, St. Tammany, Tangipahoa, Washington, West Baton Rouge, West Feliciana (including Raccourci Island).

Portions of the following parishes are also open:

Allen: North of LA 26 from DeRidder to the junction of LA 104 and north of LA 104.

Avoyelles: That portion bounded on the east by the Atchafalaya River northward from Simmesport, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1 eastward to Simmesport, EXCEPT that portion surrounding Pomme de Terre WMA, bounded on the north, east and south by LA 451, on the west by the Big Bend Levee from its junction at the Bayou des Glaise structure east of Bordelonville southward to its junction with LA 451.

Beauregard: North of LA 26 east of DeRidder, west of Hwy. 171 from the junction of Hwy. 26 south to Calcasieu Parish.

Calcasieu: West of U.S. 171 north of I-10 and north of I-10 from the jct. of U.S. 171 to Texas state line.

Caldwell: West of Ouachita River southward to Catahoula Parish line, east and north of LA 126 and south and west of LA 127.

Catahoula: West of Ouachita River southward to LA 559 at Duty Ferry, north of LA 559 to LA 124, south and west of LA 124 from Duty Ferry to LA 8 at Harrisonburg and north of LA 8 to LA 126, north and east of LA 126. Also, that portion lying east of LA 15.

Concordia: That portion lying east of Hwy. 15 and west of Hwy. 65 from its juncture with Hwy. 15 at Clayton.

Evangeline: North and west of LA 115, north of LA 106 from St. Landry to LA 13, west of LA 13 from Pine Prairie to Mamou and north of LA 104 west of Mamou.

Franklin: That portion lying east of Hwy. 17 and east of Hwy. 15 from its juncture with Hwy. 17 at Winnsboro.

Iberville: West of LA Hwy. 1. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

LaSalle: All lands lying west of LA 127 from the Caldwell Parish line to the junction of LA 124; south of LA 124 to the junction of LA 124 and 126; west of LA 126 to the junction with LA 503; north of LA 503 to Summerville; west of LA 127 from Summerville to Little River. Also, that portion of land east of LA 126 from the Caldwell Parish line to the Catahoula Parish line.

Madison: That portion lying west of U.S. Hwy. 65 and south of U.S. Hwy. 80.

Pointe Coupee: All except that portion bounded on the west by LA 77 and LA 10, northward from U.S. 190 to LA 1 at Morganza, on the north and east by LA 1 to its junction with LA 78 and by LA 78 from Parlaying to U.S. 190. FURTHER EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

Richland: That portion south of U.S. Hwy. 80 and east of Hwy. 17.

Sabine: That portion north of Hwy. 6 from Toledo Bend Lake to Many; east of Hwy. 171 from Many to the Vernon Parish Line.

St. Landry: That portion bounded on the north by U.S. 190, west by the West Atchafalaya Basin Protection Levee. Also, that portion of the parish bounded on the north by LA 10 from the West Atchafalaya Basin Protection Levee to Burton's Lake, on the east by Burton's Lake, on the south by

Petite Prairie Bayou to its junction with the old O.G. Railroad right-of-way then by the O.G.R.R. right-of-way westward to U.S. 71 and on the west by the West Atchafalaya Guide Levee to its junction with LA 10. EXCEPTION: see Indian Bayou tract owned by the U.S. Corps of Engineers for special season dates.

Upper St. Martin: All within the Atchafalaya Basin. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.

Tensas: That portion west of Hwy. 65 from the Concordia Parish line to its juncture with Hwy. 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also, all lands lying east of the main channel of the Mississippi River.

Vernon: That portion east of Hwy. 171 from the Sabine Parish line to the junction of Hwy. 111, south of Hwy. 111 and Hwy. 392 from junction with Hwy. 171 westward to Toledo Bend Lake.

Winn: Only that portion within the boundaries of the National Catahoula Wildlife Management Preserve.

Area B

April 11-April 26

All of the following parishes are open:

Bienville, Bossier, Claiborne, Lincoln, Red River, Webster

Portions of the following parishes are open:

Caddo: That portion north of LA 2 from the Texas state line to U.S. 71, east of U.S. 71 from LA 2 to I-20, south of I-20 from U.S. 71 to U.S. 171, and east of U.S. 171 to the DeSoto Parish line.

DeSoto: That portion east of U.S. 171 from the Caddo Parish line to U.S. 84 and south of U.S. 84.

Jackson: West of Parish Road 243 from Lincoln Parish line to Parish Road 238, west and south of Parish Road 238 to LA 144, west of LA 144 to LA 34, west of LA 34 to Chatham, north of LA 146 from Chatham to LA 155, north of LA 155 to LA 542, north of LA 542 to Quitman, north of LA 155 from Quitman to Parish Road 105 (Bear Knoll Road), west of Parish Road 105 to LA 147, north of LA 147 to Bienville Parish line.

Ouachita: East of LA 143 from Union Parish line to Bayou Darbonne, north of Bayou Darbonne to the Ouachita River, west of the Ouachita River from the mouth of Bayou Darbonne northward to the Morehouse Parish line.

Morehouse: West of U.S. 165 from the Arkansas line to Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to Bastrop, north of U.S. 165 from Bastrop to Ouachita Parish line.

Union: West of LA 15 from Ouachita Parish line to LA 33 west of Farmerville, north of LA 33 to LA 2 at Farmerville, north and east of LA 2 to LA 143 at Crossroads, east of LA 143 to the Ouachita Parish line.

Area C

March 21-March 29

Portions of the following parishes are open:

Ascension: All east of the Mississippi River.

Avoyelles: That portion surrounding Pomme de Terre WMA, bounded on the north, east and south by LA 451, on the west by the Big Bend levee from its junction at the Bayou des Glaise structure east of Bordelonville southward to its junction with LA 451.

Concordia: North and east of Sugar Mill Chute (Concordia Parish) from the state line westward to Red River, east of Red River northward to Cocodrie Bayou, east of Cocodrie Bayou northward to U.S. Hwy. 84, south of U.S. Hwy. 84 eastward to LA Hwy. 15 (Ferriday), east of LA Hwy. 15 northward to U.S. Hwy. 65 (Clayton), east of U.S. Hwy. 65 northward to Tensas Parish line.

Iberville: All east of the Mississippi River.

Tensas: East and south of U.S. Hwy. 65 from Concordia Parish line to Hwy. 128, south of Hwy. 128 to St. Joseph, east and south of LA Hwy. 605, 604 and 3078 northward to Port Gibson Ferry.

1998 Wildlife Management Area Turkey Hunting Regulations

General

The following rules and regulations concerning management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject the individual to citation and/or expulsion from the management area.

Only those wildlife management areas listed are open to turkey hunting.

All trails and roads designated as ATV Only shall be closed to ATVs from March 1 through June 1. ATV off-road or trail travel is prohibited. Walk-in hunting only (bicycles permitted), unless opened by sign on a trail.

Bag limits on WMAs are part of the season bag limit. The bag limit for turkeys on wildlife management areas is one per area, not to exceed two per season for all WMAs. The bag limit for turkeys is one gobbler per day and three gobblers per season including those taken on WMAs.

Permits

Self-Clearing Permits. All turkey hunts, including lottery hunts, are self-clearing and all hunters must check in daily by picking up a permit from a self-clearing station. Upon completion of each daily hunt, the hunter must check out by completing the hunter report portion of the permit and depositing it in the check-out box at a self-clearing station before exiting the WMA.

Lottery Hunts. Dewey Wills, Georgia-Pacific, Loggy Bayou, Sabine, Sherburne, Sicily Island and Tunica Hills WMAs are restricted to those persons selected as a result of the pre-application lottery. The deadline for receiving applications is January 31, 1998. An application fee of \$5 must be sent with each application. Applicants may submit only one application and will be selected for one WMA turkey lottery hunt annually. Submitting more than one application will result in disqualification. Contact any district office for applications. Hunters must abide by self-clearing permit requirements.

Requests for information on WMA regulations, permits, lottery hunt applications and maps may be directed to any district office: District 1—P.O. Box 915, Minden, 71055; (318) 371-3050; [District 2—368 Century Park Drive, Monroe, 71203; (318) 343-4044]; [District 3—1995 Shreveport Hwy., Pineville, 71360; (318) 487-5885]; [District

4—P.O. Box 426, Ferriday, 71334; (318) 757-4571]; [District 5—1213 North Lakeshore Dr., Lake Charles, 70601; (318) 491-2575]; [District 6—5652 Hwy. 182, Opelousas, 70571; (318) 948-0255]; [District 7—P.O. Box 98000, Baton Rouge, 70898; (504) 765-2360].

WILDLIFE MANAGEMENT TURKEY HUNTING SCHEDULE*

WMA	Season Dates	Permit Requirements (Mandatory)	Lottery Dates**
Bens Creek†	Mar 21-Apr 12	Self-Clearing	None
Boeuf	Mar 21-Mar 29	Self-Clearing	None
Big Lake	Mar 21-Mar 29	Self-Clearing	None
Bodcau	Apr 11-Apr 26	Self-Clearing	None
Boise Vernon	Mar 21-Apr 12	Self-Clearing	None
Camp Beauregard	Mar 21-Apr 5	Self-Clearing	None
Dewey Wills	Mar 21-Mar 29	Self-Clearing	Mar 21-22 Mar 23-25
Fort Polk	Mar 21-Apr 26	Self-Clearing	None
Georgia-Pacific	Apr 11-Apr 19	Self-Clearing	Apr 11-12 Apr 13-15
Grassy Lake	Mar 21-Mar 29	Self-Clearing	None
Jackson-Bienville	Apr 11-Apr 26	Self-Clearing	None
Little River	Mar 21-Apr 5	Self-Clearing	None
Loggy Bayou	Apr 18-Apr 19 Apr 25-Apr 26	Self-Clearing	Apr 18-19 Apr 25-26
Pearl River	Mar 21-Apr 5	Self-Clearing	None
Peason Ridge	Mar 21-Apr 26	Self-Clearing	None
Pomme de Terre	Mar 21-Mar 29	Self-Clearing	None
Red River	Mar 21-Mar 29	Self-Clearing	None
Sabine	Mar 21-Mar 22 Mar 28-Mar 29	Self-Clearing	Mar 21-22 Mar 28-29
Sandy Hollow†	Mar 21-Apr 12	Self-Clearing	None
Sherburne	Mar 21-Mar 29	Self-Clearing	Mar 21-22 Mar 23-25
Sicity Island	Mar 21-Mar 22 Mar 28-Mar 29 Apr 4-Apr 5	Self-Clearing	Mar 21-22 Mar 28-29 Apr 4-5
Three Rivers	Mar 21-Mar 29	Self-Clearing	None
Tunica Hills	Mar 21-Mar 22 Mar 28-Mar 29 Apr 4-Apr 5	Self-Clearing	Mar 21-22 Mar 28-29 Apr 4-5

*Only those Wildlife Management Areas listed have a turkey hunting season. All other areas are CLOSED. For seasons on smaller lands managed by the Department of Wildlife and Fisheries, contact the local district office.

**The deadline for receiving applications for all turkey Lottery Hunts on WMAs is January 31, 1998.

†No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

Corps of Engineers—Indian Bayou Area. Turkey hunting dates are March 21-29, 1998. Lottery hunts are March 21-22 and March 23-25. For information, annual permit, and lottery hunt application, contact Corps of Engineers Headquarters, Box 187, Krotz Springs, LA 70750; telephone (318) 566-3561.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 23:1535 (November 1997).

Daniel J. Babin
Chairman

9711#022

RULE

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

Waddill Wildlife Refuge (LAC 76:III.325)

The Wildlife and Fisheries Commission hereby amends a rule pertaining to the visitor regulations for Waddill Wildlife Refuge.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish Preserves and Sanctuaries

Chapter 3. Particular Game and Fish Preserves and Commissions

§325. Waddill Wildlife Refuge

B. General

10. The possession of firearms, bows, liquor and controlled dangerous substances on the refuge is prohibited; provided, however, that the department is authorized to construct, maintain and operate ranges, in which case, shotguns and bows will be permitted under guidelines developed by the department; and, further provided that the prohibition on the possession of firearms shall not apply to duly authorized law enforcement officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 et seq. and 56:109.

HISTORICAL NOTE: Promulgated by Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:861 (September 1996), amended LR 23:1538 (November 1997).

Daniel J. Babin
Chairman

9711#021

Notices of Intent

NOTICE OF INTENT

Department of Civil Service Civil Service Commission

Definitions; Commission Powers; Temporary Employee; Probation; Witness; Prohibited Activities; Layoff; and Reemployment

Pursuant to the authority of the Louisiana Constitution of 1994, Article X, Section 10 (a)(1), the following changes to the civil service rules are proposed:

Adopt Rules 1.15.01, 1.40.01 and 1.40.02

1.15.01 Employee—does not include any employee of a temporary services agency on contract with the state.

1.40.01 Temp or Temporary Agency Employee—a short-term, temporary worker whose employer is a private sector temporary services agency on contract with the state.

1.40.02 Temporary Services Agency—a private company on contract with the state whose primary business is to provide temporary employee staffing to private business.

Explanation: These proposed rules make it clear that employees hired through a temporary services agency that has contracted with the state are not state employees and are not eligible for state benefits.

Amend Rule 2.9(k)

2.9 Powers of the Commission

The commission is empowered:

(a) - (j) ...

(k) to issue orders withholding compensation from any person or entity, who, after investigation by public hearing, has been found by the commission to be employed or paid by the state contrary to the provisions of the constitution or the rules adopted thereunder. Such orders may be directed to the officer having the authority to approve the payroll or assign the paycheck for such employee or entity, and the officer to whom it is directed and any other person to whom such order is directed shall make no payment of compensation or authorize the making of any such payment to such person or entity until authorized by the commission upon penalty of personal liability for the sum so paid contrary to the order of the commission and such other penalties as are otherwise provided by the constitution and/or the rules;

(l) ...

Explanation: This proposal empowers the Civil Service Commission to issue orders to withhold compensation to a temporary services agency that, after investigation by public hearing, has been found to be in violation of the constitution and/or the civil service rules.

Adopt Rule 8.10.01

8.10.01 Temporary Agency Employee

(a) When work is required to be performed on a temporary basis and it is clearly evident that the work is essential to the efficiency of the agency, a temporary agency employee may be used, provided:

(1) approval has been received from the appointing authority; and

(2) he/she shall be used only for the following:
a) to replace an employee on leave;
b) to fill a vacancy pending filling the position in a regular manner; or
c) to address an emergency or work overload situation of short duration;

(3) the employment of any one individual in this category shall not extend beyond 120 calendar days in a 12-month period;

(4) the appointing authority shall maintain a tracking document of usage of individuals in this category which is certified by the appointing authority to prevent violation of Rule 8.10.01 and which is readily available for civil service audit as requested.

(b) Individual temporary agency employees may be used for any length of time up to 120 days in a 12-month period; however, the director or appointing authority may limit the duration of or cancel the usage of a temporary agency employee at any time.

(c) An extension over 120 calendar days in a 12-month period for an individual temporary agency employee shall not be allowed. If the appointing authority determines that a situation exists which requires the usage of temporary agency employees extending beyond the 120-day limit within a 12-month period, other replacement individuals may be solicited from the temporary service agency(s) on state contract.

(d) A temporary agency employee who has worked for the state over 90 days in a 12-month period shall not be hired within that 12-month period on a temporary classified appointment, other than a provisional appointment.

(e) The director may withdraw an agency's authority to make use of temporary agency employees. Willful abuse or misuse of temporary agency employees may subject offenders to financial liabilities as provided in Rule 2.9.

Explanation: These provisions outline the conditions under which temporary agency employees may work on contract with the state. Acceptable justification and time limits for such service are stated. There are no exceptions to the provision that such an individual's service shall not last over 120 calendar days in a 12-month period. Subsection (d) provides that no temporary agency worker may serve on contract over 90 days in a 12-month period and then move on to a restricted or job appointment. Such workers, if they wish a classified job, must compete in a regular manner for a probational or provisional appointment.

Amend Rule 9.1(e)

9.1 Probationary Period

(a) - (d) ...

(e) A probationary employee may be separated by the appointing authority at any time.

(f) - (g) ...

Explanation: This proposed amendment deletes the provision that the appointing authority has to furnish the director of Civil Service with written reasons for the separation of a probational appointee. This provision is not serving any useful function, as such employees can be separated for any nondiscriminatory reason. Additionally, the prevailing practice by agencies has been to report only that a separated probational employee "did not meet the standards of the agency," regardless of the specific reason.

Amend Rule 13.21(c)

13.21 Subpoena of Witnesses; Production of Documents

(a) - (b) ...

(c) In lieu of the issuance and service of formal subpoenas to persons who perform work for the state, the commission or any person authorized by Subsection (a) of this rule may request any appointing authority to order any employee, temporary worker, or contractor under his supervision to attend and testify at any hearing, and upon being so ordered the employee shall appear at the hearing and furnish testimony.

(d) - (h) ...

Explanation: This proposed amendment would allow the commission or a referee to compel the attendance of employees of temporary employment agencies and contractors by directing notices to the appointing authority for whom the temporary worker or contractor works rather than by issuing a formal subpoena.

Amend Rule 14.1(c)

14.1 Prohibited Activities

(a) - (b) ...

(c) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in a position in the classified service, except as services may be provided pursuant to a temporary services agency contract with the state as approved by the director pursuant to these rules.

(d) - (p) ...

Explanation: This rule must be amended to allow the state to contract with temporary employment agencies, a practice which until now has been prohibited. At this time, this practice will be allowed only for those state agencies which have been designated by Civil Service as pilot agencies for such a contract.

Amend Rule 17.10(a)

17.10 Appointments Under Layoff Avoidance Measures

(a) Whenever an appointing authority uses any layoff avoidance measures, he must first terminate restricted and job appointments, as well as temporary agency employees, in the affected organizational unit(s). If such appointments must later be made by the appointing authority, they must be given interim approval by the director within 14 calendar days of the appointment, subject to ratification by the commission within 60 calendar days of the appointment, or terminated.

(b) ...

Explanation: This proposal subjects temporary agency employees to the same restrictions on hiring during layoff avoidance measures as temporary classified appointees.

Amend Rule 17.23.1(b)

17.23.1 Layoff-Related Appointments

(a) ...

(b) No appointment, including the hiring of temporary agency employees, shall be made in the affected organizational unit or department to the job(s) affected by the layoff or to equivalent or lower levels of positions in the applicable career fields beginning on the date the director approves the formal layoff plan for the proposed layoff and ending 30 days after the layoff report, as stipulated by Rule 17.23, is received at the Department of State Civil Service or upon establishment of the department preferred reemployment list, whichever comes first. Exceptions to this provision

include reinstatement, internal demotion, or restoration of a former employee entitled to the position who has returned from military service in accordance with Rule 8.19. Exceptions also include restricted appointment, detail to special duty, job appointment and use of temporary agency employees, none of which shall exceed three months beyond the effective date of layoff.

Explanation: This proposal adds temporary agency employees to those workers whose hiring is restricted due to layoffs.

Amend Rule 17.25

17.25 Noncompetitive Reemployment from a Department Preferred Reemployment List

When there is a department preferred reemployment list for an agency or department affected by a layoff, containing the name of one or more qualified employees available for appointment to a vacant position in the affected agency or department, the vacancy shall be filled only by one of the following means:

- 1) reinstatement;
- 2) internal demotion;
- 3) restoration of a former employee entitled to the position who has returned from military service in accordance with Rule 8.19;
- 4) restricted appointment, job appointment, detail to special duty or use of temporary agency employees, none of which shall exceed three months beyond the effective date of layoff; or
- 5) appointment of an eligible from such preferred list.

Other details to special duty may be used before appointment from a preferred list if such details are given prior approval by the director. Other later restricted and job appointments may be used if they are offered first to the first eligible person on the department preferred list. The acceptance or declination of such temporary appointments shall not remove a person from the department preferred list for permanent appointments. Except as provided in this rule, appointment from a department preferred reemployment list shall take priority over all other methods of filling vacancies.

Explanation: This amendment adds temporary agency employees to those workers whose hiring is restricted by layoffs and the presence of a department preferred reemployment list. It also clarifies that restricted appointments not appointed from the department preferred list, shall not extend longer than three months beyond the layoff. For restricted and job appointments made later than three months after the layoff, offers of such temporary appointments must first be made from the department preferred list. The acceptance or declination of such offers does not remove a person from such list for permanent appointments.

The Civil Service Commission will hold a public hearing on Wednesday, December 3, 1997 to consider these proposed changes to civil service rules. The hearing will begin at 9 a.m. in the commission hearing room in the DOTD Annex Building at 1201 Capitol Access Road, Baton Rouge, LA.

Persons interested in making comments relative to these proposals may do so at the public hearing or by writing to the director of Civil Service at Box 94111, Baton Rouge, LA 70804-9111. If any accommodations are needed, notify the Civil Service Department prior to this meeting.

Allen H. Reynolds
Director

9711#004

NOTICE OF INTENT

Department of Economic Development Office of the Secretary

Regional Initiatives Program (LAC 13:I.Chapter 70)

In accordance with R.S. 51:2341, notice is hereby given that the Department of Economic Development, Office of the Secretary proposes to promulgate rules in LAC 13:I.Chapter 70 for the Regional Initiatives Program.

The text of this proposed rule can be viewed in its entirety in the emergency rule section of this issue.

Interested persons may comment on the proposed rules, in writing, until December 20, 1997 to Randy Rogers, National Marketing Director, Box 94185, Baton Rouge, LA 70804-9185 or 101 France Street, Suite 202, Baton Rouge, LA 70802.

Kevin P. Reilly, Sr.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Regional Initiatives Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Pursuant to Act 512 of the 1997 Regular Session, this is a new program of the Office of the Secretary, Department of Economic Development. Act 18 of 1997 provided \$1,000,000 for the Regional Initiatives Program to provide financial assistance through grants to qualified substate economic development organizations.

DED will administer the program using existing staff. Applicants are required to fund 25 percent of the project cost which is a total of \$250,000 in local funds. The program allows up to half of the 25 percent match to be in-kind.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

As a result of this new program, the department expects to see an increase in economic development activity in areas such as tourism, business growth, and retirement communities resulting in additional taxes for both the state and local government. The amount of additional revenue collections will depend on the type and nature of regional projects to be proposed and funded.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that approximately 10 regional groups from across the state should benefit from this new program in FY 97/98. Preference will be given to applications from multiparish regions, rural areas and from those areas of the state not already receiving economic development funds from the state. The program serves to help create "spirit of regional cooperation" in regions of the state. The purpose of the program is to stimulate regional economic efforts by encouraging existing public and private organizations to combine financial and leadership resources to market their shared strengths and to overcome their common deficits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program will encourage existing public and private organizations to combine financial and leadership resources to market their shared strengths and to overcome their common deficits. The effect of the program is intended to be reduced unemployment and the enhanced marketability of specific regions across the state.

Gene Cretini
Deputy Assistant Secretary
9711#040

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Economic Development Office of the Secretary Division of Economically Disadvantaged Business Development

Economically Disadvantaged Business Development Program and Small Business Bonding Program (LAC 19:II.Chapters 1 and 9)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, hereby proposes to amend its rules relative to the Economically Disadvantaged Business Development Program.

The full text of these proposed rules can be viewed in the emergency rule section of this issue of the *Louisiana Register*.

All interested persons are invited to submit written comments on the proposed amendments. Such comments should be submitted no later than 5 p.m. on December 22, 1997, to Henry J. Stamper, Executive Director, Division of Economically Disadvantaged Business Development, Box 44153, Baton Rouge, LA 70804-4153 or to 339 Florida Boulevard, Suite 212, Baton Rouge, LA 70804.

Henry J. Stamper
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Economically Disadvantaged Business Development Program—Small Business Bonding Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The total implementation cost of the proposed rules for fiscal year 1997-98 through fiscal year 1999-2000 are \$2,015,739, \$2,028,061, and \$2,029,183, respectively. These costs reflect the portion of EDBD's current administrative budget needed to operate the program as well as anticipated bond guarantees issued. However, this will not represent an increase in EDBD's operating budget due to the fact that the program has been in existence since 1996.

The department will use existing staff to implement this program. However, the opportunity cost associated with the implementation of the program for which these rules are written (\$15,739, \$28,061, and \$29,183) will be allocated from existing budget. Act 18 of the 1997 legislature appropriated \$2,000,000 for bonding guarantees.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

EDBD's self-generated revenues from guarantee fees will increase as EDBD's bond guarantees increase. It is estimated that revenues for FY 97-98 will total \$10,000. This estimate is based on guarantees issued totaling \$500,000.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The program will benefit economically disadvantaged businesses by providing bonding assistance to EDB owners that are successful bidders on contracts. The EDB owner will in turn be able to create and preserve jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program will allow access to independent insurance agents who write surety bond coverage. Therefore, the program does not negatively affect private sector employment and is not in direct competition with other government programs. Competition will likely be enhanced by the addition of markets for goods and services.

Henry J. Stamper
Executive Director
9711#019

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 1794—Textbook
Grievance Procedure (LAC 28:1.919)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education has approved for advertisement an amendment to Bulletin 1794, referenced in LAC 28:1.919. The proposed amendments add a grievance procedure which will be incorporated into the bid invitation.

**Title 28
EDUCATION**

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§919. Textbook Adoption Standards and Procedures

A. Bulletin 1794

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

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 24:

**Bulletin 1794—Textbook Adoption
Policies and Procedures**

**Chapter 10. State Encyclopedias and Encyclopedic
Reference Adoption Procedures**

A. - F. ...

(Editor's Note: the following unedited Subsection G is being published as originally submitted to the Office of the State Register, at the request of the agency.)

G. Hearing Process

Annually, the state reference adoption hearings shall be held the first week of December. Publishers responding to the invitation to bid will be given an opportunity to present their materials to the state committee. Publishers responding to the invitations to bid but not requesting time before the state committee materials must be reviewed and evaluated during the hearings, just as if there were a representative present. Materials are reviewed and evaluated on the state criteria, not oral presentations.

The hearing process begins with an in-service training session for all committee members, followed by publishers' presentations. All committee members are expected to be in attendance for the duration of the hearings (normally four days).

At the conclusion of presentations each day, committee members will discuss the materials presented, entertain questions, exchange comments, then prepare to vote.

At the time of the vote, publishers are allowed to witness the vote but are not allowed to make comments. Materials receiving a majority vote (nine) of the committee are recommended to the Board of Elementary and Secondary Education for approval. Materials receiving less than a majority vote (nine) of the committee are not recommended to the Board of Elementary and Secondary Education for approval. For all materials not recommended by the committee, the reason(s) for rejection must be given.

Publishers who have had materials rejected by this process will be so notified within one week of the end of the reference adoption hearings. Those who wish to appeal the committee's decision, or who otherwise wish to express a grievance relating to the adoption process, shall have 30 days from this notification deadline to make a written request to appear on the agenda of the next textbook and media committee meeting of the State Board of Elementary and Secondary Education. The textbook and media committee shall schedule and hear any such appeals or grievances and pass its recommendations on to the full board.

H. - J. ...

Interested persons may submit comments until 4:30 p.m., January 10, 1998 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 1794—Textbook Grievance
Procedure**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The change, a new grievance procedure, will not result in any increased costs to local school systems, since the change will not require the locals to do anything. The change consists of a

grievance procedure paragraph which will simply be incorporated into the bid invitation.

The cost of this implementation to state governmental units will be limited to the cost of reproducing it for dissemination to school districts as a one-page addendum to Bulletin 1794. The copy and postage costs will run \$34.

BESE's estimated cost for printing this policy change and the first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$100. Funds are available.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The new grievance procedure will have 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)

The people and groups most affected by this change are the vendors who participate in the reference adoption process, since the change affords them a grievance procedure at the end of that process. This change will effect an increase in workload and paperwork only if a person or company wishes to avail itself of this grievance procedure. In that case the person or company would be required to fill out a grievance procedure form and, optionally, to appear before the BESE Board's Textbook and Media Committee meeting when the grievance is placed on that committee's agenda.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The new grievance procedure will have no effect on competition or employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
9711#057

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Commission on Law Enforcement and
Administration of Criminal Justice**

Uniform Crime Reporting System (LAC 22:III.5501)

The Commission on Law Enforcement and Administration of Criminal Justice, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and by the authority of the commission, as provided in R.S. 15:1204(9), gives notice that rulemaking procedures have been initiated to adopt rules regarding the UCR program.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE
AND LAW ENFORCEMENT**

**Part III. Commission on Law Enforcement and
Administration of Criminal Justice**

**Subpart 6. Grant Applications or Subgrants Utilizing
Federal, State or Self-Generated Funds**

**Chapter 55. Uniform Crime Reporting System
§5501. Funding Eligibility**

A. Effective January 1, 1998, law enforcement agencies that fail to participate in the state Uniform Crime Reporting System (UCR) or having been relieved of that obligation through certification as a Louisiana Incident Based Crime

Reporting System (LIBRS) agency that fail to participate in the LIBRS program shall not be eligible for funding under any grant program administered by the Commission on Law Enforcement.

B. Any agency receiving funding to participate in the Louisiana Incident Based Crime Reporting System (LIBRS) that fails to participate in the system shall not be eligible for funding under any grant program administered by the Commission on Law Enforcement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 24:

Interested persons may submit written comments on the proposed rule until 5 p.m., November 30, 1997, to Carle Jackson, Criminal Justice Policy Advisor, Commission on Law Enforcement and Administration of Criminal Justice, 1885 Wooddale Boulevard, Room 708, Baton Rouge, LA 70806.

Michael A. Ranatza
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Uniform Crime Reporting System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no estimated implementation costs or savings for state or local governmental units. The proposed rule will prevent law enforcement agencies that fail to participate in the state reporting system from receiving any grant funding from the Louisiana Commission on Law Enforcement. Law enforcement agencies are expected to continue their participation in the crime reporting systems and receive anticipated grant funding.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no estimated effect on revenue collections of state or local governmental units. Many federal programs determine the dollar amount disbursed to the individual states based on an analysis of each state's crime figures. This rule is being proposed to prevent a potential reduction in federal revenue to the state which could result if law enforcement agencies fail to report crime figures. There has been no reduction in federal revenue to date; however, without the implementation of this proposed rule, there is the potential for a reduction in federal revenue collections in future years.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule will impose no costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment.

Michael A. Ranatza
Executive Director
9711#010

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Office of the Governor Crime Victims Reparations Board

Definitions and Award Payments/Limits
(LAC 22:XIII.103, 501, and 503)

In accordance with the provision of R.S. 46:1801 et seq., the Crime Victims Reparations Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Crime Victims Reparation Board hereby gives notice of its intent to amend rules relative to the awarding of compensation to applicants.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XIII. Crime Victims Reparations Board

Chapter 1. Authority and Definitions

§103. Definitions

* * *

Intervenor—a person who goes to the aid of another and is killed or injured in the good faith effort to prevent a crime covered by this Chapter, to apprehend a person reasonably suspected of having engaged in such a crime, or to aid a peace officer. "Peace officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife enforcement agents, and probation and parole officers.

Pecuniary Loss—amount of expenses reasonably and necessarily incurred by reason of personal injury, as a consequence of death, or a catastrophic property loss, and includes:

- a.i. - iii. ...
- b. as a consequence of death:
 - i. - iii. ...
 - iv. counseling or therapy for any surviving family member of the victim or any person in close relationship to such victim;
 - v. *pecuniary loss* does not include loss attributable to pain and suffering.
- c. - d. ...

* * *

Victim

- a. any person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by this Chapter; or
- b. - c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:538 (May 1994), amended LR 22:709 (August 1996), LR 23:861 (July 1997), LR 24:

Chapter 5. Awards

§501. Payment of Awards

- A. ...
- B. Verification of Claimed Expenses
 1. Each type of claim form used by the board should identify the documents that must be submitted by the victim/claimant to support and verify a claimed expense.

2. When applications lack documentation necessary for a decision or award in total or in part, and adequate effort has been made to acquire that information, the application will be placed on an agenda and the decision and award will be based on that information available. Should the formerly sought information become available, a supplemental application can be filed.

C. - F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), repromulgated LR 22:710 (August 1996), LR 24:

§503. Limits on Awards

- A. - B.3. ...
- C. Funeral Expenses
 1. A maximum of \$3,000 for all services. This is to cover the costs of the funeral.
 2. - 3. ...
 - 4.a. - c. Repealed.
- D. Lost Wages/ Earnings
 1. - 3.b. ...
 4. The board may reimburse loss wages/earnings with a maximum of \$10,000.
 - a. The board will award up to \$320 per week based on net, after-tax or take home pay.
 - b. If only gross income is provided, the board will award at 80 percent of gross up to the \$400 per week cap.
 5. - 8. ...
 - 9.a. - d. Repealed.
 10. - 11. ...
 12. Repealed.
- E.1. - 3.b. ...
- F. Ambulance
 1. A maximum of \$300 for regular ambulance transport. A maximum of \$500 exists for air medical transport.
 2. - 4. ...
- G. Medical Expenses
 1. - 2. ...
 3. The board will pay 70 percent of all outstanding charges after any third-party payment sources up to the statutory limits.
 4. - 5. ...
 6. Psychiatric Inpatient Hospitalization. It is the opinion of the board that any psychiatric inpatient hospitalization required by a crime victim would be very acute and crisis management in scope. Compensation for such care will require a peer review as described in §503.I.3
 - a. The board will not reimburse for more than seven days of psychiatric inpatient hospitalization at a cost of no more than \$500 per day. This is intended for an acute hospitalization with the goals of emotional stabilization and placement in outpatient treatment.
 - b. The board will not reimburse more than one psychological evaluation (as defined in §503.I.5).
 - i. - iii.(c). ...
 - c. Therapeutic groups outside the per diem charge of the hospital will not be reimbursed.
 - d. All therapist charges that are outside the per diem charge of the hospital will be limited to no more than one session per day at a rate described in §503.I.8.

e. - f. Repealed.

7. - 11. ...

12.a. - c. Repealed.

H. Travel Expenses. Transportation costs other than the initial ambulance services are reimbursable only when required medical care is not locally available. Certification is required by the physician of record that local medical care is unavailable. Allowable private vehicle mileage for out-of-town travel is reimbursed at the rate published in the current state travel regulation.

I. Mental Health Counseling

1. It is the board's opinion that the majority of those directly victimized by violent crime (e.g., *Primary Victims*) can obtain significant improvement within the first six months of qualified counseling. The board recognizes that short-term crisis management counseling may also be needed for *Secondary Victims* (defined as primary family members or cohabitators of the victim).

2. Reimbursement of mental health services is limited to six months from the date of the first visit or after the first 26 qualified sessions/groups (whichever comes first).

3. Cases which extend beyond the allowable time limit will be subject to a peer review by a psychiatrist or psychologist, licensed by the state of Louisiana, consulting with the board. Peer review will involve an examination of the following:

- a. complete progress notes for crime-related conditions(s) being treated;
 - b. any psychological evaluations/testing pertaining to the crime-related condition;
 - c. description of prior conditions or treatments;
 - d. current treatment and treatment response to date;
- and
- e. updated treatment plan.

4. For the life of each case, reimbursable charges may not exceed \$5,000 for Primary Victims and \$2,500 for Secondary Victims. These limits include the cost of all treatment services and psychological evaluations/testing as described in §503.I.8.

5. Psychological evaluation/testing may not exceed \$300. Any evaluation/testing must be conducted by a licensed psychologist and should include the following:

- a. description of any structured interview used;
- b. description and results of testing administered; and
- c. case formulation and DSM-IV diagnoses.

6. Treatment plans completed by the therapist of record (or primary therapist) are required for consideration of mental health expenses. The therapist must show that the psychological condition being treated is a direct result of the crime. Treatment plans must be fully documented in a "problem" and "intervention" format. Detail must be provided for both symptom and intervention. Single word descriptors such as "nightmares" or "supporting counseling" will not suffice. Insufficient treatment plans will be returned to the therapist and the case may be deferred or denied until revised.

7. All payments for services are subject to review and audit by the board.

8. Only physicians, psychiatrists, state-certified or state-licensed psychologists, licensed professional counselors,

or board certified social workers are eligible for reimbursement.

The rates for reimbursement shall be:

a.	M.D./Psychiatrists	\$75/hour
b.	Ph.D. or Psy.D.Licensed Psychologists	\$75/hour
c.	Licensed Professional Counselors	\$60/hour
d.	Board Certified Social Worker	\$60/hour
e.	Group Therapy Rates (90 minute minimum sessions)	\$25/session

9. It is the board's assessment that psychiatric inpatient hospitalization of crime victims is rarely required. If under unusual circumstances such treatment is required, compensation will be subject to a peer review as previously described. Reimbursement for such treatment is limited in amounts and procedures listed under "medical" services.

10. Any claim for injuries sustained may be denied if prescribed or preempted as a matter of law.

11. Repealed.

J. Catastrophic Property Loss

1. - 3. ...

4. Repealed.

K. Vehicular Incidents

1. - 2. ...

3.a. - b. Repealed.

L. Child Care Expenses

1. - 3. ...

4.a. - d. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Crime Victims Reparations Board, LR 20:539 (May 1994), amended LR 22:710 (August 1996), LR 24:

Interested persons may submit written comments on this proposed rule no later than December 30, 1998 at 5 p.m. to Bob Wertz, Crime Victims Reparations Board, 1885 Wooddale Boulevard, Room 708, Baton Rouge, LA 70806.

Lamarr Davis
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Compensation to Victims**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated that implementation of the proposed rules will increase expenditures by approximately \$191,190 annually in statutorily dedicated funds from the Crime Victims Reparation Fund which is derived from costs levied in state criminal courts. This proposed rule will increase current limits in certain categories of payments which can be made to eligible victims of violent crimes. Printing costs of \$340 for publication of these rules have been included in the total expenditures. Sufficient funds are available in the Crime Victims Reparation Fund to cover these additional expenditures.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated that implementation of the proposed rules will increase revenue collections beginning in FY 99; however, the exact amount is unknown. The dollar amount of federal grant funding allotted annually to the Louisiana Commission on Law Enforcement (LCLE) is contingent upon the dollar amount of state funds which the agency expends for crime victims in the preceding year; therefore, increased state expenditures will generate additional federal funding for the agency in the next fiscal year. Implementation of this proposed rule should increase state expenditures beginning in FY 98, thereby increasing federal revenue collections beginning in FY 99.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed amendments will result in award increases up to \$10,000 to victims of violent crimes in certain categories of compensable pecuniary loss. Certain automatic preclusions and reductions will be eliminated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition or employment in the public or private sector as a result of these proposed amendments.

Michael A. Ranatza
Executive Director
9711#023

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Public Contracts—Closed Specifications
for Certain Products (LAC 34:III.901)**

The Division of Administration, Office of Facility Planning and Control, proposes to adopt a rule affecting the procurement of construction services under R.S. 38:2212 et seq. and which applies to the closing of specifications for products that are necessary to expand or extend existing systems but for which a person or group of persons possesses the right to exclusive distribution. This proposed rule is being promulgated in direct compliance with Act 678 of the 1997 Regular Session.

Under current purchasing procedures, products for the systems listed in the rule must be purchased separately from the construction contract and turned over to the contractor for installation. This causes a risk of improper installation and reduces the contractor's responsibility for the proper functioning of the system. The proposed rule will make it possible to include the products in the construction contract and improve the quality of installation and obtain a single source of responsibility.

The full text of this proposed rule (LAC 34:III.901) can be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit comments to William S. Morrison, Box 94095, Baton Rouge, LA 70804-9095. He is responsible for responding to inquiries regarding this proposed rule.

Roger Magendie
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Closed Specifications for Certain Products**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated that this proposed rule should reduce administrative expenditures for the Division of Administration; however, the exact amount is unknown. Current rules prohibit including exclusively distributed products in plans and specifications; therefore, these exclusive products must be purchased separately from the construction contract through the provisions of Title 39 relative to sole source procurement. Implementation of this rule, which is being promulgated in compliance with Act 678 of the 1997 Regular Session, would eliminate the need for separate contracts, thus reducing administrative costs.

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 are no estimated costs or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Roger Magendie
Director
9711#031

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Licensed Professional Counselors Board of Examiners**

Appraisal (LAC 46:LX.503)

The Licensed Professional Counselors Board of Examiners, under the authority of the Mental Health Counselor Licensing Act, R.S. 37:1101-1115, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby intends to amend the following to include the definition of "Appraisal":

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LX. Licensed Professional Counselors Board of
Examiners

Chapter 5. Definitions

§503. Definitions

For purposes of this rule, the following definitions will apply.

(Editor's Note: Certain text in §503 is being repromulgated in order to correctly codify this Section into the Louisiana Administrative Code.)

Board—the Louisiana Licensed Professional Counselors Board of Examiners

Licensed Professional Counselor—any person who holds himself out to the public for a fee or other personal gain, by any title or description of services incorporating the words "licensed professional counselor" or any similar term, and who offers to render professional mental health counseling services denoting a client-counselor relationship in which the counselor assumes responsibility for knowledge, skill, and ethical considerations needed to assist individuals, groups, organizations, or the general public, and who implies that he is licensed to practice mental health counseling.

Mental Health Counseling Services—those acts and behaviors coming within the "practice of mental health counseling" as defined in R.S. 37:1103. However, nothing in these rules shall be construed to authorize any person licensed hereunder to administer or interpret psychological tests or engage in the practice of psychology in accordance with the provisions of R.S. 37:2352(5).

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

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

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

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

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

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

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

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

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

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

b. **Consulting**—interpreting or reporting scientific fact or theory to provide assistance in solving current or potential problems of individuals, groups, or organizations.

c. **Referral Activities**—the evaluation of data to identify problems and to determine the advisability of referral to other specialists.

d. **Research Activities**—reporting, designing, conducting, or consulting on research in counseling with human subjects.

(Editor's Note: the text below [through the end of §503] is being proposed as new text.)

e. **Appraisal**—

i. use or administration of tests of language, educational and achievement tests, adaptive behavioral tests, and symptoms screening checklists or instruments, as well as tests of abilities, interests, and aptitudes, for the purpose of diagnosing those conditions allowed within the scope of these statutes, defining counseling goals, planning and implementing interventions, and documenting client progress as related to mental health counseling. Appraisal includes but is not necessarily limited to the following areas:

(a). **abilities**—those normative-based individual and group administered instruments used to measure general mental ability vis-a-vis specific abilities.

(b). **interests**—those normative-based individual and group administered instruments used to suggest educational and vocational adjustment, interpersonal relations, intrapersonal tendencies and interests, satisfaction from avocational pursuits, and other major phases of human development.

(c). **aptitudes**—those normative-based individual and group administered instruments used to measure special ability related to a future task(s).

ii. qualified licensed professional counselors as well as other appropriately licensed or certified professionals may also administer or use tests of language, educational and achievement, adaptive behavior tests, and symptom screening checklists or instruments. The administration and interpretation of these tests are not exclusively within the scope of this regulation.

iii. appraisals done within the practice of mental health counseling must be performed in accordance with the requirements of the *Louisiana Administrative Code*, Title 46, Part LX, Chapter 21, Code of Conduct for Licensed Professional Counselors. A licensed professional counselor

must be privileged by this board to utilize formal appraisal instruments and shall limit such use to those areas heretofore mentioned in Chapter 5. A licensed professional counselor who wishes to be board privileged to utilize formal appraisal instruments in the appraisal of individuals shall additionally furnish this board satisfactory evidence of formal graduate training in statistics, sampling theory, test construction, test and measurements and individual differences. Formal training shall include a practicum and supervised practice with appraisal instruments.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 16:303 (April 1990), LR 18:51 (January 1992), LR 22:102 (February 1996), LR 24:

Interested parties may submit written comments to Gary S. Grand, Board Chairman, Licensed Professional Counselors Board of Examiners, 8631 Summa Avenue, Suite A, Baton Rouge LA 70809. Written comments will be accepted through December 10, 1997.

A public hearing will be held on Monday, December 29, 1997, 5 p.m. at Central State Hospital, West Shamrock, Building 14, Room 127, Pineville, LA.

Gary S. Grand
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Appraisal**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation costs will be \$1,200 in FY 97/98. No costs are anticipated for the FYs 98/99 or 99/00. Costs will be incurred by the LPC Board only. There will be no impact upon the general treasury.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Anticipated revenue collections as a result of implementation of this proposed rule are approximately \$3,000 for FY 97/98, \$7,500 for FY 98/99, and \$4,000 for FY 99/00. Revenue will be collected by the LPC Board via fees for consideration of privileging. There will be no impact upon the general treasury.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Costs to directly affected persons (LPCs) are estimated to be approximately \$100 per person as a result of fees paid to the board for consideration of board privileging to perform formal appraisals. Economic benefits to directly affected persons or nongovernmental groups should be marginal.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There could be a marginal effect on competition in the private sector. Exempt private sector agencies and individuals

are listed in R.S. 37:1101-1113.1-6. All public sector employees are exempt from R.S 37:1101-1115.

Gary S. Grand
Chairman
9711#012

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Licensed Professional Counselors Board of Examiners**

Code of Conduct (LAC 46:LX.Chapter 21)

The Licensed Professional Counselors Board of Examiners, under authority of the Mental Health Counselor Licensing Act, R.S. 37:1101-1115, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby intends to amend its present Code of Conduct to be consistent with the new American Counseling Association Code of Ethics which became effective for the association on July 1, 1995, as the ethical rules governing the practice of mental health counseling in the state of Louisiana.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LX. Licensed Professional Counselors Board of
Examiners**

Chapter 21. Code of Conduct

§2101. Preamble

A. The Licensed Professional Counselors Board of Examiners is dedicated to the enhancement of the worth, dignity, potential, and uniqueness of each individual in the state of Louisiana.

B. Specification of a code of conduct enables the board to clarify to present and future counselors and to those served by counselors the responsibilities held in common by persons practicing mental health counseling.

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

D. The existence of this code of conduct serves to govern the practice of mental health counseling and the professional functioning of the Licensed Professional Counselors Board of Examiners in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:622 (August 1989), amended LR 24:

§2103. The Counseling Relationship

A. Client Welfare

1. **Primary Responsibility.** The primary responsibility of counselors shall be to respect the dignity and to promote the welfare of clients.

2. **Positive Growth and Development.** Counselors shall encourage client growth and development in ways that foster the clients' interest and welfare; counselors shall avoid fostering dependent counseling relationships.

3. **Counseling Plans.** Counselors and their clients shall work jointly in devising integrated, individual counseling plans that offer reasonable promise of success and are consistent with abilities and circumstances of clients. Counselors and clients shall regularly review counseling plans to ensure their continued viability and effectiveness, respecting clients' freedom of choice.

4. **Family Involvement.** Counselors shall recognize that families are usually important in clients' lives and shall strive to enlist family understanding and involvement as a positive resource, when appropriate.

5. **Career and Employment Needs.** Counselors shall work with their clients in considering employment in jobs and circumstances that are consistent with the clients' overall abilities, vocational limitations, physical restrictions, general temperament, interest and aptitude patterns, social skills, education, general qualifications, and other relevant characteristics and needs. Counselors shall neither place nor participate in placing clients in positions that will result in damaging the interest and the welfare of clients, employers, or the public.

B. Respecting Diversity

1. **Nondiscrimination.** Counselors shall not condone or engage in discrimination based on age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, marital status, or socioeconomic status.

2. **Respecting Differences.** Counselors shall actively attempt to understand the diverse cultural backgrounds of the clients with whom they work. This includes, but is not limited to, learning how the counselor's own cultural/ethnic/racial identity impacts her/his values and beliefs about the counseling process.

C. Client Rights

1. **Disclosure to Clients.** When counseling is initiated, and throughout the counseling process as necessary, counselors shall inform clients of the purposes, goals, techniques, procedures, limitations, potential risks and benefits of services to be performed, and other pertinent information. Counselors shall take steps to ensure that clients understand the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements. Clients shall have the right to expect confidentiality and to be provided with an explanation of its limitations, including supervision and/or treatment team professionals; to obtain clear information about their case records; to participate in the ongoing counseling plans; and to refuse any recommended services and be advised of the consequences of such refusal.

2. **Freedom of Choice.** Counselors shall offer clients the freedom to choose whether to enter into a counseling relationship and to determine which professional(s) will provide counseling. Restrictions that limit choices of clients shall be fully explained.

3. **Inability to Give Consent.** When counseling minors or persons unable to give voluntary informed consent, counselors shall act in these clients' best interests.

D. **Clients Served by Others.** If a client is receiving services from another mental health professional, counselors, with client's consent, shall inform the professional persons already involved and develop clear agreements to avoid confusion and conflict for the client.

E. Personal Needs and Values

1. **Personal Needs.** In the counseling relationship, counselors shall be aware of the intimacy and responsibilities inherent in the counseling relationship, maintain respect for clients, and shall avoid actions that seek to meet their personal needs at the expense of clients.

2. **Personal Values.** Counselors shall be aware of their own values, attitudes, beliefs, and behaviors and how these apply in a diverse society, and shall avoid imposing their values on clients.

F. Dual Relationships

1. **Avoid When Possible.** Counselors shall be aware of their influential positions with respect to clients, and they shall avoid exploiting the trust and dependency of clients. Counselors shall make every effort to avoid dual relationships with clients that could impair professional judgement or increase the risk of harm to clients. (Examples of such relationships include, but are not limited to, familial, social, financial, business, or close personal relationships with clients.) When a dual relationship cannot be avoided, counselors shall take appropriate professional precautions such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

2. **Superior/Subordinate Relationships.** Counselors shall not accept as clients superiors or subordinates with whom they have administrative, supervisory, or evaluative relationships.

G. Sexual Intimacies with Clients

1. **Current Clients.** Counselors shall not have any type of sexual intimacies with clients and shall not counsel persons with whom they have had a sexual relationship.

2. **Former Clients.** Counselors shall not engage in sexual intimacies with former clients within a minimum of two years after terminating the counseling relationship. Counselors who engage in such relationship after two years following termination shall have the responsibility to thoroughly examine and document that such relations did not have an exploitative nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, adverse impact on the client, and actions by the counselor suggesting a plan to initiate a sexual relationship with the client after termination.

H. **Multiple Clients.** When counselors agree to provide counseling services to two or more persons who have a relationship (such as husband and wife, or parents and children), counselors shall clarify, at the outset, which person or persons are clients and the nature of the relationships they will have with each involved person. If it becomes apparent that counselors may be called upon to perform potentially conflicting roles, they shall clarify, adjust, or withdraw from roles appropriately.

I. Group Work

1. **Screening.** Counselors shall screen prospective group counseling/therapy participants. To the extent possible,

counselors shall select members whose needs and goals are compatible with goals of the group, who will not impede the group process, and whose well-being will not be jeopardized by the group experience.

2. Protecting Clients. In a group setting, counselors shall take reasonable precautions to protect clients from physical or psychological trauma.

J. Fees and Bartering

1. Advance Understanding. Counselors shall clearly explain to clients, prior to entering the counseling relationship, all financial arrangements related to professional services including the use of collection agencies or legal measures for nonpayment.

2. Establishing Fees. In establishing fees for professional counseling services, counselors shall consider the financial status of clients and locality. In the event that the established fee structure is inappropriate for a client, assistance shall be provided in attempting to find comparable services of acceptable cost.

3. Bartering Discouraged. Counselors shall ordinarily refrain from accepting goods or services from clients in return for counseling services because such arrangements create inherent potential for conflicts, exploitation, and distortion of the professional relationship. Counselors may participate in bartering only if the relationship is not exploitive, if the client requests it, if a clear written contract is established, and if such arrangements are an accepted practice among professionals in the community.

4. Pro Bono Service. Counselors shall contribute to society by devoting a portion of their professional activity to services for which there is little or no financial return (pro bono).

K. Termination and Referral

1. Abandonment Prohibited. Counselors shall not abandon or neglect clients in counseling. Counselors shall assist in making appropriate arrangements for the continuation of treatment, when necessary, during interruptions such as vacations, and following termination.

2. Inability to Assist Clients. If counselors determine an inability to be of professional assistance to clients, they shall avoid entering or immediately terminate a counseling relationship. Counselors shall be knowledgeable about referral resources and suggest appropriate alternatives. If clients decline the suggested referral, counselors shall discontinue the relationship.

3. Appropriate Termination. Counselors shall terminate a counseling relationship, securing client agreement when possible, when it is reasonably clear that the client is no longer benefiting; when services are no longer required; when counseling no longer serves the client's needs or interests; or when agency or institution limits do not allow provision of further counseling services.

L. Computer Technology

1. Use of Computers. When computer applications are used in counseling services, counselors shall ensure that:

a. the client is intellectually, emotionally, and physically capable of using the computer application;

b. the computer application is appropriate for the needs of the client;

c. the client understands the purpose and operation of the computer applications;

d. a follow-up of client use of a computer application is provided to correct possible misconceptions, discover inappropriate use, and assess subsequent needs.

2. Explanation of Limitations. Counselors shall ensure that clients are provided information as a part of the counseling relationship that adequately explains the limitations of computer technology.

3. Access to Computer Applications. Counselors shall provide for equal access to computer applications in counseling services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:622 (August 1989), amended LR 24:

§2105. Confidentiality

A. Right to Privacy

1. Respect for Privacy. Counselors shall respect their clients' right to privacy and avoid illegal and unwarranted disclosures of confidential information.

2. Client Waiver. The right to privacy may be waived by the client or their legally recognized representative.

3. Exceptions. The general requirement that counselors shall keep information confidential does not apply when disclosure is required to prevent clear and imminent danger to the client or others or when legal requirements demand that confidential information be revealed. Counselors shall consult with other professionals when in doubt as to the validity of an exception.

4. Contagious, Fatal Diseases. A counselor who receives information confirming that a client has a disease commonly known to be both communicable and fatal shall be justified in disclosing information to an identifiable third party who, by his or her relationship with the client, is at a high risk of contracting the disease. Prior to making a disclosure the counselor shall ascertain that the client has not already informed the third party about his or her disease and that the client is not intending to inform the third party in the immediate future.

5. Court Ordered Disclosure. When court ordered to release confidential information without a client's permission, counselors shall request to the court that the disclosure not be required due to potential harm to the client or counseling relationship.

6. Minimal Disclosure. When circumstances require the disclosure of confidential information, only essential information shall be revealed. To the extent possible, clients shall be informed before confidential information is disclosed.

7. Explanation of Limitations. When counseling is initiated and throughout the counseling process as necessary, counselors shall inform clients of the limitations of confidentiality and identify foreseeable situations in which confidentiality must be breached.

8. Subordinates. Counselors shall make every effort to ensure that privacy and confidentiality of clients are maintained by subordinates including employees, supervisees, clerical assistants, and volunteers.

9. Treatment Teams. If client treatment will involve a continued review by a treatment team, the client shall be informed of the team's existence and composition.

B. Groups and Families

1. Group Work. In group work, counselors shall clearly define confidentiality and the parameters for the specific group being entered, explain its importance, and discuss the difficulties related to confidentiality involved in group work. The fact that confidentiality cannot be guaranteed shall be clearly communicated to group members.

2. Family Counseling. In family counseling, information about one family member shall not be disclosed to another member without permission. Counselors shall protect the privacy rights of each family member.

C. Minor or Incompetent Clients. When counseling clients who are minors or individuals who are unable to give voluntary, informed consent, parents or guardians shall be included in the counseling process as appropriate. Counselors shall act in the best interests of clients and take measures to safeguard confidentiality.

D. Records

1. Requirement of Records. Counselors shall maintain records necessary for rendering professional services to their clients and as required by laws, regulations, or agency or institution procedures.

2. Confidentiality of Records. Counselors shall be responsible for securing the safety and confidentiality of any counseling records they create, maintain, transfer, or destroy whether the records are written, taped, computerized, or stored in any other medium.

3. Permission to Record or Observe. Counselors shall obtain permission from clients prior to electronically recording or observing sessions.

4. Client Access. Counselors shall recognize that counseling records are kept for the benefit of clients, and therefore shall provide access to records and copies of records when requested by competent clients, unless the records contain information that may be misleading and detrimental to the client. In situations involving multiple clients, access to records shall be limited to those parts of records that do not include confidential information related to another client.

5. Disclosure or Transfer. Counselors shall obtain written permission from clients to disclose or transfer records to legitimate third parties unless exceptions to confidentiality exist as listed in §2105.A. Steps shall be taken to ensure that receivers of counseling records are sensitive to their confidential nature.

E. Research and Training

1. Data Disguise Required. Use of data derived from counseling relationships for purposes of training, research, or publication shall be confined to content that is disguised to ensure the anonymity of the individuals involved.

2. Agreement for Identification. Identification of a client in a presentation or publication shall be permissible only when the client has reviewed the material and has agreed to its presentation or publication.

F. Consultation

1. Respect for Privacy. Information obtained in a consulting relationship shall be discussed for professional

purposes only with persons clearly concerned with the case. Written and oral reports shall present data germane to the purposes of the consultation, and every effort shall be made to protect client identity and avoid undue invasion of privacy.

2. Cooperating Agencies. Before sharing information, counselors shall make efforts to ensure that there are defined policies in other agencies serving the counselor's clients that effectively protect the confidentiality of information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:623 (August 1989), amended LR 24:

§2107. Professional Responsibility

A. Standards Knowledge. Counselors shall have a responsibility to read, understand, and follow the Code of Ethics and the Standards of Practice.

B. Professional Competence

1. Boundaries of Competence. Counselors shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Counselors shall demonstrate a commitment to gain knowledge, personal awareness, sensitivity, and skills pertinent to working with a diverse client population. The Licensed Professional Counselors Board of Examiners shall require their licensees to submit to this board a written statement of area(s) of intended practice along with supporting documentation of qualifications for the respective area(s) in which practice is intended.

2. New Specialty Areas of Practice. Counselors shall practice in specialty areas new to them only after appropriate education, training, and supervised experience. While developing skills in new specialty areas, counselors shall take steps to ensure the competence of their work and to protect others from possible harm. The Licensed Professional Counselors Board of Examiners shall require their licensees to submit to this board a written statement of new area(s) of intended practice along with supporting documentation of qualifications for the respective area(s) in which practice is intended.

3. Qualified for Employment. Counselors shall accept employment only for positions for which they are qualified by education, training, supervised experience, state and national professional credentials, and appropriate professional experience. Counselors shall hire for professional counseling positions only individuals who are qualified and competent.

4. Monitor Effectiveness. Counselors shall continually monitor their effectiveness as professionals and take steps to improve when necessary. Counselors in private practice shall take reasonable steps to seek out peer supervision to evaluate their efficacy as counselors.

5. Ethical Issues Consultation. Counselors shall take reasonable steps to consult with other counselors or related professionals when they have questions regarding their ethical obligations or professional practice.

6. Continuing Education. Counselors shall recognize the need for continuing education to maintain a reasonable level of awareness of current scientific and professional information in their fields of activity. They shall take steps to

maintain competence in the skills they use, are open to new procedures, and keep current when the diverse and/or special populations with whom they work.

7. Impairment. Counselors shall refrain from offering or accepting professional services when their physical, mental, or emotional problems are likely to harm a client or others. They shall be alert to the signs of impairment, seek assistance for problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.

C. Advertising and Soliciting Clients

1. Accurate Advertising. There are no restrictions on advertising by counselors except those that can be specifically justified to protect the public from deceptive practices. Counselors shall advertise or represent their services to the public by identifying their credentials in an accurate manner that is not false, misleading, deceptive, or fraudulent. Counselors shall only advertise the highest degree earned which is in counseling or a closely related field from a college or university that was accredited by one of the regional accrediting bodies recognized by the Council on Postsecondary Accreditation at the time the degree was awarded.

2. Testimonials. Counselors who use testimonials shall not solicit them from clients or other persons who, because of their particular circumstances, may be vulnerable to undue influence.

3. Statements by Others. Counselors shall make reasonable efforts to ensure that statements made by others about them or the profession of counseling are accurate.

4. Recruiting through Employment. Counselors shall not use their places of employment or institutional affiliation to recruit or gain clients, supervisees, or consultees for their private practices.

5. Products and Training Advertisements. Counselors who develop products related to their profession or conduct workshops or training events shall ensure that the advertisements concerning these products or events are accurate and disclose adequate information for consumers to make informed choices.

6. Promoting to Those Served. Counselors shall not use counseling, teaching, training, or supervisory relationships to promote their products or training events in a manner that is deceptive or would exert undue influence on individuals who may be vulnerable. Counselors may adopt textbooks they have authored for instruction purposes.

7. Professional Association Involvement. Counselors shall actively participate in local, state, and national associations that foster the development and improvement of counseling.

D. Credentials

1. Credentials Claimed. Counselors shall claim or imply only professional credentials possessed and are responsible for correcting any known misrepresentations of their credentials by others. Professional credentials shall include graduate degrees in counseling or closely related mental health fields, accreditation of graduate programs, national voluntary certifications, government-issued certifications or licenses, ACA professional membership, or

any other credential that might indicate to the public specialized knowledge or expertise in counseling.

2. ACA Professional Membership. ACA professional members may announce to the public their membership status. Regular members shall not announce their ACA membership in a manner that might imply they are credentialed counselors.

3. Credential Guidelines. Counselors shall follow the guidelines for use of credentials that have been established by the entities that issue the credentials.

4. Misrepresentation of Credentials. Counselors shall not attribute more to their credentials than the credentials represent, and shall not imply that other counselors are not qualified because they do not possess certain credentials.

5. Doctoral Degrees from Other Fields. Counselors who hold a master's degree in counseling or a closely related mental health field, but hold a doctoral degree from other than counseling or a closely related field shall not use the title, "Dr." in their practices and shall not announce to the public in relation to their practice or status as a counselor that they hold a doctorate.

E. Public Responsibility

1. Nondiscrimination. Counselors shall not discriminate against clients, students, or supervisees in a manner that has a negative impact based on their age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, or socioeconomic status, or for any other reason.

2. Sexual Harassment. Counselors shall not engage in sexual harassment.

a. *Sexual Harassment*—sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with professional activities or roles, and that either:

i. is unwelcome, is offensive, or creates a hostile workplace environment, and counselors know or are told this;

ii. is sufficiently severe or intense to be perceived as harassment to a reasonable person in the context.

b. Sexual harassment can consist of a single intense or severe act or multiple persistent or pervasive acts.

3. Reports to Third Parties. Counselors shall be accurate, honest, and unbiased in reporting their professional activities and judgments to appropriate third parties including courts, health insurance companies, those who are the recipients of evaluation reports, and others.

4. Media Presentations. When counselors provide advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, they shall take reasonable precautions to ensure that:

a. the statements are based on appropriate professional counseling literature and practice;

b. the statements are otherwise consistent with the Code of Ethics and the Standards of Practice;

c. the recipients of the information are not encouraged to infer that a professional counseling relationship has been established.

5. Unjustified Gains. Counselors shall not use their professional positions to seek or receive unjustified personal gains, sexual favors, unfair advantage, or unearned goods or services.

F. Responsibility to Other Professionals

1. **Different Approaches.** Counselors shall be respectful of approaches to professional counseling that differ from their own. Counselors shall know and take into account the traditions and practices of other professional groups with which they work.

2. **Personal Public Statements.** When making personal statements in a public context, counselors shall clarify that they are speaking from their personal perspectives and that they are not speaking on behalf of all counselors or the profession.

3. **Clients Served by Others.** When counselors learn that their clients are in a professional relationship with another mental health professional, they shall request release from clients to inform the other professionals and strive to establish positive and collaborative professional relationships.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:622 (August 1989), amended LR 24:

§2109. Relationships with Other Professionals

A. Relationships with Employers and Employees

1. **Role Definition.** Counselors shall define and describe for their employers and employees the parameters and levels of their professional roles.

2. **Agreements.** Counselors shall establish working agreements with supervisors, colleagues, and subordinates regarding counseling or clinical relationships, confidentiality, adherence to professional standards, distinction between public and private material, maintenance and dissemination of recorded information, workload, and accountability. Working agreements in each instance shall be specified and made known to those concerned.

3. **Negative Conditions.** Counselors shall alert their employers to conditions that may be potentially disruptive or damaging to the counselor's professional responsibilities or that may limit their effectiveness.

4. **Evaluation.** Counselors shall submit regularly to professional review and evaluation by their supervisor or the appropriate representative of the employer.

5. **In-Service.** Counselors shall be responsible for in-service development of self and staff.

6. **Goals.** Counselors shall inform their staff of goals and programs.

7. **Practices.** Counselors shall provide personnel and agency practices that respect and enhance the rights and welfare of each employee and recipient of agency services. Counselors shall strive to maintain the highest levels of professional services.

8. **Personnel Selection and Assignment.** Counselors shall select competent staff and assign responsibilities compatible with their skills and experiences.

9. **Discrimination.** Counselors, as either employers or employees, shall not engage in or condone practices that are inhumane, illegal, or unjustifiable (such as considerations based on age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, or socioeconomic status) in hiring, promotion, or training.

10. **Professional Conduct.** Counselors shall have a responsibility both to clients and to the agency or institution within which services are performed to maintain high standards of professional conduct.

11. **Exploitive Relationships.** Counselors shall not engage in exploitive relationships with individuals over whom they have supervisory, evaluative, or instructional control or authority.

12. **Employer Policies.** The acceptance of employment in an agency or institution implies that counselors shall be in agreement with its general policies and principles. Counselors shall strive to reach agreement with employers as to acceptable standards of conduct that allow for changes in institutional policy conducive to the growth and development of clients.

B. Consultation

1. **Consultation as an Option.** Counselors may choose to consult with any other professionally competent persons about their clients. In choosing consultants, counselors shall avoid placing the consultant in a conflict of interest situation that would preclude the consultant being a proper party to the counselor's efforts to help the client. Should counselors be engaged in a work setting that compromises this consultation standard, they shall consult with other professionals whenever possible to consider justifiable alternatives.

2. **Consultant Competency.** Counselors shall be reasonably certain that they have or the organization represented has the necessary competencies and resources for giving the kind of consulting services needed and that appropriate referral resources are available.

3. **Understanding with Clients.** When providing consultation, counselors shall attempt to develop with their clients a clear understanding of problem definition, goals for change, and predicted consequences of interventions selected.

4. **Consultant Goals.** The consulting relationship is one in which client adaptability and growth toward self-direction shall be consistently encouraged and cultivated.

C. Fees for Referral

1. **Accepting Fees from Agency Clients.** Counselors shall refuse a private fee or other remuneration for rendering services to persons who are entitled to such services through the counselor's employing agency or institution. The policies of a particular agency may make explicit provisions for agency clients to receive counseling services from members of its staff in private practice. In such instances, the clients must be informed of other options open to them should they seek private counseling services.

2. **Referral Fees.** Counselors shall not accept a referral fee from other professionals.

D. **Subcontractor Arrangements.** When counselors work as subcontractors for counseling services for a third party, they shall have a duty to inform clients of the limitations of confidentiality that the organization may place on counselors in providing counseling services to clients. The limits of such confidentiality ordinarily shall be discussed as part of the intake session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:625-26 (August 1989), amended LR 24:

§2111. Evaluation, Appraisal, and Interpretation

A. General

1. **Appraisal Techniques.** The primary purpose of appraisal (henceforth known as "appraisal") is to provide measures that are objective and interpretable in either comparative or absolute terms. Counselors shall recognize the need to interpret the statements in §2111 as applying to the whole range of appraisal techniques, including test and nontest data. Counselors shall recognize their legal parameters in utilizing formalized appraisal techniques and adhere to such.

2. **Client Welfare.** Counselors shall promote the welfare and best interests of the client in the development, publication, and utilization of appraisal techniques. They shall not misuse appraisal results and interpretations and shall take reasonable steps to prevent others from misusing the information these techniques provide. They shall respect the client's right to know the result, the interpretations made, and the bases for their conclusions and recommendations.

B. Competence to Use and Interpret Tests

1. **Limits of Competence.** Counselors shall recognize the limits of their competence and perform only those testing and appraisal services for which they have been trained and is within R.S. 37:1101-1115. They shall be familiar with reliability, validity, related standardization, error of measurement, and proper application of any technique utilized. Counselors using computer-based test interpretations shall be trained in the construction being measured and the specific instrument being used prior to using this type of computer application. Counselors shall take reasonable measures to ensure the proper use of formalized appraisal techniques by persons under their supervision.

2. **Appropriate Use.** Counselors shall be responsible for the appropriate application, scoring, interpretation, and use of appraisal instruments, whether they score and interpret such tests themselves or use computerized or other services.

3. **Decisions Based on Results.** Counselors shall be responsible for decisions involving individuals or policies that are based on appraisal results have a thorough understanding of formalized measurement technique, including validation criteria, test research, and guidelines for test development and use.

4. **Accurate Information.** Counselors shall provide accurate information and avoid false claims or misconceptions when making statements about formalized appraisal instruments or techniques.

C. Informed Consent

1. **Explanation to Clients.** Prior to performing such, counselors shall explain the nature and purposes of a formal appraisal and the specific use of results in language the client (or other legally authorized person on behalf of the client) can understand, unless an explicit exception to this right has been agreed upon in advance. Regardless of whether scoring and interpretation are completed by counselors, or by computer or other outside services, counselors shall take reasonable steps to ensure that appropriate explanations are given to the client.

2. **Recipients of Results.** The examinee's welfare, explicit understanding, and prior agreement shall determine the recipients of test results. Counselors shall include accurate and appropriate interpretations with any release of individual or group test results.

D. Release of Information to Competent Professionals

1. **Misuse of Results.** Counselors shall not misuse appraisal results, including test results, and interpretations, and shall take reasonable steps to prevent the misuse of such by others.

2. **Release of Raw Data.** Counselors shall ordinarily release data (e.g., protocols, counseling or interview notes, or questionnaires) in which the client is identified only with the consent of the client or the client's legal representative. Such data are usually released only to persons recognized by counselors as competent to interpret the data.

E. Test Selection

1. **Appropriateness of Instruments.** Counselors shall carefully consider the validity, reliability, psychometric limitations, and appropriateness of instruments when selecting tests for use in a given situation or with a particular client.

2. **Culturally Diverse Populations.** Counselors shall be cautious when selecting tests for culturally diverse populations to avoid inappropriateness of testing that may be outside of socialized behavioral or cognitive patterns.

F. Conditions of Test Administration

1. **Administration Conditions.** Counselors shall administer tests under the same conditions that were established in their standardization. When tests are not administered under standard conditions or when unusual behavior or irregularities occur during the testing session, those conditions shall be noted in interpretation, and the results may be designated as invalid or of questionable validity.

2. **Computer Administration.** Counselors shall be responsible for ensuring that administration programs function properly to provide clients with accurate results when a computer or other electronic methods are used for test administration.

3. **Unsupervised Test-Taking.** Counselors shall not permit unsupervised or inadequately supervised use of tests or appraisals unless the tests or appraisals are designed, intended, and validated for self-administration and/or scoring.

4. **Disclosure of Favorable Conditions.** Prior to test administration, conditions that produce most favorable test results shall be made known to the examinee.

G. Diversity in Testing. Counselors shall be cautious in using appraisal techniques, making evaluations, and interpreting the performance of populations not represented in the norm group on which an instrument was standardized. They shall recognize the effects of age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, and socioeconomic status on test administration and interpretation and place test results in proper perspective with other relevant factors.

H. Test Scoring and Interpretation

1. **Reporting Reservations.** In reporting appraisal results, counselors shall indicate any reservations that exist regarding validity or reliability because of the circumstances

of the appraisal or the inappropriateness of the norms for the person tested.

2. **Research Instruments.** Counselors shall exercise caution when interpreting the results of research instruments possessing insufficient technical data to support respondent results. The specific purposes for the use of such instruments shall be stated explicitly to the examinee.

3. **Testing Services.** Counselors who provide test scoring and test interpretation services to support the appraisal process shall confirm the validity of such interpretations. They shall accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use. The public offering of an automated test interpretations service shall be considered a professional-to-professional consultation. The formal responsibility of the consultant shall be to the consultee, but the ultimate and overriding responsibility shall be to the client.

I. **Test Security.** Counselors shall maintain the integrity and security of tests and other appraisal techniques consistent with legal and contractual obligations. Counselors shall not appropriate, reproduce, or modify published tests or parts thereof without acknowledgment and permission from the publisher.

J. **Obsolete Tests and Outdated Test Results.** Counselors shall not use data or test results that are obsolete or outdated for the current purpose. Counselors shall make every effort to prevent the misuse of obsolete measures and test data by others.

K. **Test Construction.** Counselors shall use established scientific procedures, relevant standards, and current professional knowledge for test design in the development, publication, and utilization of appraisal techniques.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:624 (August 1989), amended LR 24:

§2113. Teaching, Training, and Supervision

A. Counselor Educators and Trainers

1. **Educators as Teachers and Practitioners.** Counselors who are responsible for developing, implementing, and supervising educational programs shall be skilled as teachers and practitioners. They shall be knowledgeable regarding the ethical, legal, and regulatory aspects of the profession, shall be skilled in applying that knowledge, and shall make students and supervisees aware of their responsibilities. Counselors shall conduct counselor education and training programs in an ethical manner and shall serve as role models for professional behavior. Counselor educators shall make an effort to infuse material related to human diversity into all courses and/or workshops that are designed to promote the development of professional counselors.

2. **Relationship Boundaries with Students and Supervisees.** Counselors shall clearly define and maintain ethical, professional, and social relationship boundaries with their students and supervisees. They shall be aware of the differential in power that exists and the student's or supervisee's possible incomprehension of that power differential. Counselors shall explain to students and

supervisees the potential for the relationship to become exploitive.

3. **Sexual Relationships.** Counselors shall not engage in sexual relationships with students or supervisees and shall not subject them to sexual harassment.

4. **Contributions to Research.** Counselors shall give credit to students or supervisees for their contributions to research and scholarly projects. Credit shall be given through co-authorship, acknowledgment, footnote statement, or other appropriate means, in accordance with such contributions.

5. **Close Relatives.** Counselors shall not accept close relatives as students or supervisees.

6. **Supervision Preparation.** Counselors who offer clinical supervision services shall be adequately prepared in supervision methods and techniques. Counselors who are doctoral students serving as practicum or internship supervisors to master's level students shall be adequately prepared and supervised by the training program.

7. **Responsibility for Services to Clients.** Counselors who supervise the counseling services of others shall take reasonable measures to ensure that counseling services provided to clients are professional.

8. **Endorsement.** Counselors shall not endorse students or supervisees for certification, licensure, employment, or completion of an academic or training program if they believe students or supervisees are not qualified for the endorsement. Counselors shall take reasonable steps to assist students or supervisees who are not qualified for endorsement to become qualified.

B. Counselor Education and Training Programs

1. **Orientation.** Prior to admission, counselors shall orient prospective students to the counselor education or training program's expectations, including but not limited to the following:

- a. the type and level of skill acquisition required for successful completion of the training;
- b. subject matter to be covered;
- c. basis for evaluation;
- d. training components that encourage self-growth or self-disclosure as part of the training process;
- e. the type of supervision settings and requirements of the sites for required clinical field experiences;
- f. student and supervisee evaluation and dismissal policies and procedures;
- g. up-to-date employment prospects for graduates.

2. **Integration of Study and Practice.** Counselors shall establish counselor education and training programs that integrate academic study and supervised practice.

3. **Evaluation.** Counselors shall clearly state to students and supervisees, in advance of training, the levels of competency expected, appraisal methods, and timing of evaluations for both didactic and experiential components. Counselors shall provide students and supervisees with periodic performance appraisal and evaluation feedback throughout the training program.

4. **Teaching Ethics.** Counselors shall make students and supervisees aware of the ethical responsibilities and standards of the profession and the students' and supervisees' ethical responsibilities to the profession.

5. Peer Relationships. When students or supervisees are assigned to lead counseling groups or provide clinical supervision for their peers, counselors shall take steps to ensure that students and supervisees placed in these roles do not have personal or adverse relationships with peers and that they understand they have the same ethical obligations as counselor educators, trainers, and supervisors. Counselors shall make every effort to ensure that the rights of peers are not compromised when students or supervisees are assigned to lead counseling groups or provide clinical supervision.

6. Varied Theoretical Positions. Counselors shall present varied theoretical positions so that students and supervisees may make comparisons and have opportunities to develop their own positions. Counselors shall provide information concerning the scientific bases of professional practice.

7. Field Placements. Counselors shall develop clear policies within their training program regarding field placement and other clinical experiences. Counselors shall provide clearly stated roles and responsibilities for the student or supervisee, the site supervisor, and the program supervisor. They shall confirm that site supervisors are qualified to provide supervision and are informed of their professional and ethical responsibilities in this role.

8. Dual Relationships as Supervisors. Counselors shall avoid dual relationships such as performing the role of site supervisor and training program supervisor in the student's or supervisee's training program. Counselors shall not accept any form of professional services, fees, commissions, reimbursement, or remuneration from a site for student or supervisee placement.

9. Diversity in Programs. Counselors shall be responsive to their institution's and program's recruitment and retention needs for training program administrators, faculty, and students with diverse backgrounds and special needs.

C. Students and Supervisees

1. Limitations. Counselors, through ongoing evaluation and appraisal, shall be aware of the academic and personal limitations of students and supervisees that might impede performance. Counselors shall assist students and supervisees in securing remedial assistance when needed, and dismiss from the training program supervisees who are unable to provide competent service due to academic or personal limitations. Counselors shall seek professional consultation and document their decision to dismiss or refer students or supervisees for assistance. Counselors shall assure that students and supervisees have recourse to address decisions made, to require them to seek assistance, or to dismiss them.

2. Self-Growth Experience. Counselors shall use professional judgment when designing training experiences conducted by the counselors themselves that require student and supervisee self-growth or self-disclosure. Safeguards shall be provided so that students and supervisees are aware of the ramifications their self-disclosure may have on counselors whose primary role as teacher, trainer, or supervisor requires acting on ethical obligations to the profession. Evaluative components of experiential training experiences shall explicitly delineate predetermined academic

standards that are separate and not dependent on the student's level of self-disclosure.

3. Counseling for Students and Supervisees. If students or supervisees request counseling, supervisors or counselor educators shall provide them with acceptable referrals. Supervisors or counselor educators shall not serve as counselor to students or supervisees over whom they hold administrative, teaching, or evaluative roles unless this is a brief role associated with a training experience.

4. Clients of Students and Supervisees. Counselors shall make every effort to ensure that the clients at field placements are aware of the services rendered and the qualifications of the students and supervisees rendering those services. Clients shall receive professional disclosure information and shall be informed of the limits of confidentiality. Client permission shall be obtained in order for the students and supervisees to use any information concerning the counseling relationship in the training process.

5. Standards for Students and Supervisees. Students and supervisees preparing to become counselors shall adhere to the Code of Ethics and the Standards of Practice. Students and supervisees shall have the same obligations to clients as those required of counselors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:626 (August 1989), amended LR 24:

§2115. Research and Publication

A. Research Responsibilities

1. Use of Human Subjects. Counselors shall plan, design, conduct, and report research in a manner consistent with pertinent ethical principles, federal and state laws, host institutional regulations, and scientific standards governing research with human subjects. Counselors shall design and conduct research that reflects cultural sensitivity appropriateness.

2. Deviation from Standard Practices. Counselors shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.

3. Precautions to Avoid Injury. Counselors who conduct research with human subjects shall be responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical, or social effects to their subjects.

4. Principal Researcher Responsibility. The ultimate responsibility for ethical research practice shall lie with the principal researcher. All others involved in the research activities shall share ethical obligations and full responsibility for their own actions.

5. Minimal Interference. Counselors shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.

6. Diversity. Counselors shall be sensitive to diversity and research issues with special populations. They shall seek consultation when appropriate.

B. Informed Consent

1. Topics Disclosed. In obtaining informed consent for research, counselors shall use language that is understandable to research participants and that:

- a. accurately explains the purpose and procedures to be followed;
- b. identifies any procedures that are experimental or relatively untried;
- c. describes the attendant discomforts and risks;
- d. describes the benefits or changes in individuals or organizations that might be reasonably expected;
- e. discloses appropriate alternative procedures that would be advantageous for subjects;
- f. offers to answer any inquiries concerning the procedures;
- g. describes any limitations on confidentiality;
- h. instructs that subjects are free to withdraw their consent and to discontinue participation in the project at any time.

2. Deception. Counselors shall not conduct research involving deception unless alternative procedures are not feasible and the prospective value of the research justifies the deception. When the methodological requirements of a study necessitate concealment or deception, the investigator shall be required to explain clearly the reasons for this action as soon as possible.

3. Voluntary Participation. Participation in research shall be typically voluntary and without any penalty for refusal to participate. Involuntary participation shall be appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation.

4. Confidentiality of Information. Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to such information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, shall be explained to participants as a part of the procedure for obtaining informed consent.

5. Persons Incapable of Giving Informed Consent. When a person is incapable of giving informed consent, counselors shall provide an appropriate explanation, obtain agreement for participation, and shall obtain appropriate consent from a legally authorized person.

6. Commitments to Participants. Counselors shall take reasonable measures to honor all commitments to research participants.

7. Explanations After Data Collection. After data are collected, counselors shall provide participants with full clarification of the nature of the study to remove any misconceptions. Where scientific or human values justify delaying or withholding information, counselors shall take reasonable measures to avoid causing harm.

8. Agreements to Cooperate. Counselors who agree to cooperate with another individual in research or publication shall incur an obligation to cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.

9. Informed Consent for Sponsors. In the pursuit of research, counselors shall give sponsors, institutions, and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Counselors shall be aware of their obligation to future research workers and ensure that host institutions are given feedback information and proper acknowledgment.

C. Reporting Results

1. Information Affecting Outcome. When reporting research results, counselors shall explicitly mention all variables and conditions known to the investigator that may have affected the outcome of a study or the interpretation of data.

2. Accurate Results. Counselors shall plan, conduct, and report research accurately and in a manner that minimizes the possibility that results will be misleading. They shall provide thorough discussions of the limitations of their data and alternative hypotheses. Counselors shall not engage in fraudulent research, distort data, misrepresent data, or deliberately bias their results.

3. Obligation to Report Unfavorable Results. Counselors shall communicate to other counselors the results of any research judged to be of professional value. Results that reflect unfavorably on institutions, programs, services, prevailing opinions, or vested interests shall not be withheld.

4. Identity of Subjects. Counselors who supply data, aid in the research of another person, report research results, or make original data available shall take due care to disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.

5. Replication Studies. Counselors shall be obligated to make available sufficient original research data to qualified professionals who may wish to replicate the study.

D. Publication

1. Recognition of Others. When conducting and reporting research, counselors shall be familiar with and give recognition to previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

2. Contributors. Counselors shall give credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions shall be acknowledged in notes or introductory statements.

3. Student Research. For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.

4. Duplicate Submission. Counselors shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in another journal or published work shall not be submitted for publication without acknowledgment and permission from the previous publication.

5. Professional Review. Counselors who review material submitted for publication, research, or other scholarly

purposes shall respect the confidentiality and proprietary rights of those who submitted it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:625 (August 1989), amended LR 24:

§2117. Resolving Ethical Issues

A. Knowledge of Standards. Counselors shall be familiar with the Code of Ethics and the Standards of Practice and other applicable ethics codes from other professional organizations of which they are members, or from certification and licensure bodies. Lack of knowledge or misunderstanding of an ethical responsibility shall not be a defense against a charge of unethical conduct.

B. Suspected Violations

1. Ethical Behavior Expected. Counselors shall expect professional associates to adhere to the Code of Ethics. When counselors possess reasonable cause that raises doubts as to whether a counselor is acting in an ethical manner, they shall take appropriate action.

2. Consultation. When uncertain as to whether a particular situation or course of action may be in violation of the Code of Ethics, counselors shall consult with other counselors who are knowledgeable about ethics, with colleagues, or with appropriate authorities.

3. Organization Conflicts. If the demands of an organization with which counselors are affiliated pose a conflict with the Code of Ethics, counselors shall specify the nature of such conflicts and express to their supervisors or other responsible officials their commitment to the Code of Ethics. When possible, counselors shall work toward change within the organization to allow full adherence to the Code of Ethics.

4. Informal Resolution. When counselors have reasonable cause to believe that another counselor is violating an ethical standard, they shall attempt to first resolve the issue informally with the other counselor if feasible, providing that such action does not violate confidentiality rights that may be involved.

5. Reporting Suspected Violations. When an informal resolution is not appropriate or feasible, counselors, upon reasonable cause, shall take action such as reporting the suspected ethical violation to state or national ethics committee, unless this action conflicts with confidentiality rights that cannot be resolved.

6. Unwarranted Complaints. Counselors shall not initiate, participate in, or encourage the filing of ethics complaints that are unwarranted or intend to harm a counselor rather than to protect clients or the public.

C. Cooperations with Ethics Committees. Counselors shall assist in the process of enforcing the Code of Ethics. Counselors shall cooperate with investigations, proceedings, and requirements of the ACA Ethics Committee or ethics committees of other duly constituted associations or boards having jurisdiction over those charged with a violation. Counselors shall be familiar with the ACA Policies and Procedures and use it as a reference in assisting the enforcement of the Code of Ethics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-15.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:622 (August 1989), amended LR 24:

Persons who wish to submit comments should write to Gary S. Grand, Board Chairman, Licensed Professional Counselors Board of Examiners, 8631 Summa Avenue, Suite A, Baton Rouge, LA 70809. Comments will be accepted through December 10, 1997.

A public hearing will be held on Monday, December 29, 1997, 5 p.m. at Central State Hospital, West Shamrock, Building 14, Room 127, Pineville LA.

Gary S. Grand
Board Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Code of Conduct

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation costs will be \$1,200 in fiscal year 1997/98; and \$0 in 1998/99 and 1999/00. No other costs or savings to other state agencies or local governmental units are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections of other state or local governmental units due to this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
It is anticipated that there will be no change in costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There could be marginal effect on competition in the private sector. Exempt private sector agencies and individuals are listed in R.S. 37:1113(1)-(6). All public sector employees are exempt from R.S. 37:1101-1115. No effect on competition or employment in the public sector is estimated.

Gary S. Grand
Board Chair
9711#013

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Licensed Professional Counselors Board of Examiners

Fees (LAC 46:LX.901)

The Licensed Professional Counselors Board of Examiners, under the Authority of the Mental Health Counselor Licensing Act, R.S. 37:1101-1115, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby intends to amend the following fees for the maintenance of the Licensed Professional Counselors Board of Examiners.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LX. Licensed Professional Counselors Board of
Examiners**

Chapter 9. Fees

§901. General

A. The board shall collect the following fees:

- | | |
|---|---------------|
| 1. registration of supervision | \$ 100 |
| 2. privileging review for appraisal and other specialty areas | \$ 100 |
| 3. application for licensure | \$ 200 |
| 4. renewal of license | \$ 150 |
| 5. late fee for renewal | \$ 50 |
| 6. reissue of license (duplicate) | \$ 25 |
| 7. name change on records | \$ 25 |
| 8. copy of LPC file | \$ 25 |
| 9. copy of any documents | cost incurred |

B. The late fee will be incurred the day after a licensee's designated renewal deadline at 4 p.m. (no grace period). If the deadline falls on a weekend, the next working day will be considered as the deadline for the renewal at 4 p.m. No part of any fee shall be refundable under any conditions. All fees for licensing must be paid to the board by certified check or money order.

C. The board may assess and collect all costs incurred in connection with disciplinary actions including, but not limited to, the fees of investigators, stenographers, and procedural hearing officers. The prevailing party in any disciplinary action shall be reimbursed for all attorney fees and costs incurred in connection with such action.

D. The board may assess and collect fines in an amount not to exceed \$500 for violations of Chapter 9 and rules promulgated by the board.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 14:82 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 15:545 (July 1989), LR 18:51 (January 1992), LR 24:

Interested persons may submit written comments on the proposed rule to Gary S. Grand, Board Chairman, Licensed Professional Counselors Board of Examiners, 8631 Summa Avenue, Suite A, Baton Rouge, LA 70809. Written comments will be accepted through December 10, 1997.

A public hearing will be held on Monday, December 29, 1997, 5 p.m. at Central State Hospital, West Shamrock, Building 14, Room 127, Pineville, LA.

Gary S. Grand
Board Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Fees**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation costs are forecasted at approximately \$1,200 during FY 97/98. No additional costs are anticipated for FY 98/99, or FY 99/00. No other costs or savings to other state agencies or local governmental units are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Additional revenues to be collected by the board are forecasted to be as follows: FY 97/98=\$30,200; FY 98/99=\$42,050; and FY 99/00=\$32,800. There will be no effect on other state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Additional costs for directly affected persons (LPCs and prospective LPC applicants) should be as follows:
 1. privileging review and registration of supervision: increase from \$75 to \$100;
 2. renewal of license: increase from \$100 to \$150;
 3. late fee for renewal (new fee): \$50;
 4. copy of any documents (new fee): actual cost incurred;
 5. fines (to be imposed only when violation of LPC licensure law and/or rules published by the board have occurred): maximum fine of \$500.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should not be any effect on competition or employment.

Gary S. Grand
Board Chair
9711#073

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office for Citizens with Developmental Disabilities**

**Admission to State-Operated
Developmental Centers (LAC 48:IX.511)**

The Department of Health and Hospitals, Office for Citizens with Developmental Disabilities proposes to adopt LAC 48:IX.511, State Residential Facilities as follows.

This notice proposes to adopt regulations by establishing the current procedures for admission to a state residential facility, codified in *Louisiana Administrative Code* format.

Title 48

PUBLIC HEALTH—GENERAL

Part IX. Mental Retardation/Developmental Services

Chapter 5. State Residential Facilities

**§511. DHH Policy on Admission to State Residential
Facilities**

Effective February 20, 1998, an individual whose eligibility for participation in the MR/DD Services System has been established and whose generic service plan indicates a need

for a residential living option may be voluntarily admitted to a public residential facility at which there is an available funded bed. The public facility must determine that the individual's needs, as specified in the generic service plan, can be met. The individual is formally admitted when the public facility accepts the individual as a recipient. In the process of selecting a generic living option, the team, which includes the individual and/or family, is required to consider what meets the individual's needs, and no more, and the most natural living option available, consistent with an individual's community peers. Involuntary admission is governed by R.S. 28:404.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:380 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 24:

Interested persons may submit written comments to Bruce C. Blaney, Assistant Secretary of the Office for Citizens with Developmental Disabilities, Box 3117 - Bin Number 21, Baton Rouge, LA 70821-3117. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on Monday, December 29, 1997 at 2:30 p.m. in the Department of Transportation and Development's First Floor Auditorium, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for receipt of all comments is 4 p.m. on the day following the public hearing.

Bobby P. Jindal
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Admission to State-Operated
Developmental Centers**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will increase state costs approximately \$150 for printing which are included under the costs for the first year of implementation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will have 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 are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups because this rule changes procedures but does not affect eligibility for services; or the level of services provided by OCDD; or the payment for any services reimbursed by OCDD.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Bruce C. Blaney
Assistant Secretary
9711#048

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary**

Memorandum of Understanding Between the
Department of Health and Hospitals and the
Capital Area Human Services District—FY 97/98
(LAC 48:I.Chapter 27)

Under the authority of R.S. 46:2661 et seq. as enacted by Act 54 of the first Extraordinary Session of 1996, the Department of Health and Hospitals, Office of the Secretary proposes to adopt the following rule.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

**Chapter 27. Capital Area Human Services District
§2701. Introduction**

This agreement is entered into by and between Department of Health and Hospitals, hereinafter referred to as DHH, and Capital Area Human Services District, hereinafter referred to as CAHSD, in compliance with R.S. 46:2661 et seq. as well as any subsequent legislation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2703. Purpose and General Agreement

A. The Department of Health and Hospitals is authorized by law to provide for the direction, operation, development and management of programs of community-based mental health, mental retardation/developmental disabilities, alcohol and substance abuse, public health and related activities for eligible consumers in Louisiana.

B. The legislation authorizes CAHSD to provide services of community-based mental health, developmental disabilities, alcohol and substance abuse, public health and related activities for eligible consumers in the CAHSD, which includes East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Pointe Coupee parishes; and to assure that services meet all relevant federal and state regulations; and to provide the functions necessary for the administration of such services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2705. Designation of Liaisons

The primary liaison persons under this agreement are:

A, for DHH deputy secretary
B, for CAHSD chairperson

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2709. Services to be Delivered

A. In order to provide a broad spectrum of coordinated public services to consumers of OMH, OCDD, OADA, OPH

and for the district administration, the CAHSD will assume programmatic, administrative and fiscal responsibilities for including, but not limited to, the following:

1. OCDD community support;
2. mental health services consistent with the State Mental Health Plan, as required under the annual Mental Health Block Grant Plan;
3. outpatient treatment (nonintensive) OADA;
4. community-based residential services OADA;
5. intensive outpatient treatment/day treatment OADA;
6. nonmedical/social detoxification OADA;
7. primary prevention;
8. healthy community regional program OPH.

B. Attachment B provides definitions for above listed services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2711. Responsibilities of Each Party

A. CAHSD accepts the following responsibilities:

1. perform the functions which provide community-based services and continuity of care for the diagnosis, prevention, detection, treatment, rehabilitation and follow-up care of mental and emotional illness;
2. be responsible for community-based programs and functions relating to the care, diagnosis, eligibility determination, training, treatment, case management of developmentally disabled and autistic persons as defined by the MRDD law;
3. collaborate with Region II PH Managers to assist them to perform community-based functions which provide services and continuity of care for education, prevention, detection, treatment, rehabilitation and follow-up care related to personal health;
4. promote and support community based planning of broad health issues through the Healthy Communities Strategic Planning Model;
5. provide for the gradual assumption of appropriate community public health functions;
6. perform community-based functions related to the care, diagnosis, training, treatment, and education of alcohol or drug abusers and prevention of alcohol and drug abuse;
7. maintain services in community-based, mental health, developmental disabilities, and substance abuse at least at the same level as the state maintains similar programs;
8. ensure that the quality of services delivered is equal to or higher than the quality of services previously delivered by the state;
9. perform human resources functions necessary for the operation of the CAHSD;
10. be responsible for the provision of any function/service mandated by the Block Grant Plan of each respective program office;
11. provide systems management and services data/reports in a format and content as that required of all regions by each DHH Program Office. Specific content of required information sets will be negotiated and issued annually through Program Office directives;

12. utilize ARAMIS, MIS, SPOE and any other required DHH/Program Office systems to meet state and federal reporting requirements;

13. human resource staffing data will be available for on-site review;

14. maintain and support Single Point of Entry (SPOE) state standard;

15. provide for successful delivery of services to persons discharged from state facilities into the CAHSD service area by collaborative discharge planning;

16. provide in-kind or hard match resources as required for acceptance of federal grant or entitlement funds utilized for services in the CAHSD as appropriately and collaboratively applied for;

17. make available a list of all social and professional services available to children and adults through contractual agreement with local providers.

B. DHH retains/accepts the following responsibilities:

1. operation and management of any inpatient facility under jurisdiction of the DHH except that the CAHSD shall have authority and responsibility for determination of eligibility for receipt of such inpatient services (single point of entry function) which were determined at the regional level prior to the initiation of this agreement;

2. operation, management and performance of functions and services for environmental health;

3. operation, management and performance of functions related to the Louisiana Vital Records Registry and the collection of vital statistics;

4. operation, management and performance of functions and services related to laboratory analysis in the area of personal and environmental health;

5. operation, management and performance of functions and services related to education provided by or authorized by any state or local educational agency;

6. monitoring this service agreement, assuring corrective action through coordination with CAHSD and reporting failures to comply to the governor's office;

7. operation, management and performance of functions for pre-admission screening and resident review process for nursing home reform;

8. operation, management and performance of functions for enrollment and monitoring of targeted case management;

9. DHH will share with CAHSD information regarding, but not limited to, program data, statistical data, and planning documents that pertain to the CAHSD;

10. DHH will provide legal support to and representation of the CAHSD in Civil Service matters and Risk Management;

11. DHH retains all prior authorization functions for Mental Health Medicaid Services;

12.a. DHH will perform a feasibility assessment to determine how to best bring public health into the CAHSD. The assessment will:

i. identify the services that are provided in Region II and which ones exist to serve the CAHSD population predominately;

ii. identify funding sources for each program and the numbers and funding source of staff associated with each;

iii. identify what services are provided to the PH office in Region II by the OPH in New Orleans;

iv. identify which services need to remain centralized and which ones can be managed within the district.

b. The study is to be completed in time for preparation of the FY 99 budget request. Information will be shared with the CAHSD Executive Director throughout the assessment period.

C. Joint Responsibilities

1. To determine if community-based mental health, developmental disabilities, substance abuse, and public health services are delivered at least at the same level by CAHSD as the state provides for similar programs in other areas, performance indicators shall be established. Such indicators will measure extensiveness of services, accessibility of services, availability of services and, most important, quality of services. The CAHSD will not be required to meet performance indicators which are not mandated for state-operated programs in these service areas, and which were not previously collected by Region 2.

2. CAHSD's progress toward achieving outcomes which meet or exceed those realized by DHH-operated programs in the affected geographic region shall be measured by comparing the CAHSD data on results to baseline statistics reported by regional DHH programs for the year prior to July 1, 1997. Specific outcome measurements/performance indicators to be compared will be jointly agreed upon by CAHSD and DHH.

3. DHH and its Program Offices, in conjunction with CAHSD, will design a longitudinal program evaluation strategy. The program evaluation should concentrate on management and program specific issues. The strategy shall be formalized and DHH shall provide the resources for any objective third party retained for the purposes of such study.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2713. Reallocation of Resources/Staff and Financial Agreements

A. For FY 97-98, DHH agrees to transfer the personnel and financial resources, as described in Attachment A, to the direction and management of the CAHSD. Data in Attachment A will be adjusted based upon the final appropriation for the CAHSD.

B. The CAHSD will submit to DHH an annual budget request for funding of the cost for providing the services and programs for which the CAHSD is responsible. The format for such request shall be consistent with that required by the Division of Administration and DHH. The request shall conform with the time frame established by DHH.

C. Revisions of the budget may be made upon written consent between the CAHSD and DHH and/or as appropriate, through the Legislative Budget Committee's BA-7 process. In the event any additional funding is appropriated and received by DHH that affects any budget categories for the direction, operation, and management of the programs of mental health, mental retardation/developmental disabilities, substance abuse services, and public health, and related activities for any other such DHH entities or regions, the CAHSD and DHH will

mutually agree upon the allocation due to the CAHSD, and will make the appropriate changes to the budget.

D. In the event of a budget reduction, CAHSD will receive a proportionate reduction in its budget.

E. The CAHSD shall be responsible for the billing of all eligible Title XVIII and Title XIX reimbursements for services as well as all other third-party billable services provided.

F. The CAHSD shall assume all financial assets and/or liabilities associated with the programs transferred.

G. CAHSD shall be responsible for repayment of any funds received which are determined ineligible and subsequently disallowed.

H. DHH agrees to maintain the level of support from the Office of the Secretary and from the Office of Management and Finance which is consistent with the current level of support now provided to the regional OCDD, OH, and OADA and OPH offices. These supports include: Communication and Inquiry, Internal Audit, Environmental Consultant, Fiscal Management, Information Services, Facility Management, Budget, Contract and Lease Management, Research and Development, Materials Management, Appeals, Human Rights, and Staff Development/Training.

I. Payment of premiums to Office of Risk Management for insurance costs associated with transferred staff, functions, and property use shall continue to be made by DHH. CAHSD shall be responsible for adhering to all requirements of the Office of Risk Management regarding maintenance of a risk management program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2715. Joint Training and Meetings

CAHSD, through its staff, will participate in DHH and other programmatic training, meetings and other activities as agreed upon by CAHSD and DHH. In a reciprocal manner, CAHSD will provide meetings, training sessions, and other activities that will be available for participation by DHH staff as mutually agreed upon by the CAHSD and the DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2717. Special Provisions

A. The CAHSD agrees to abide by all applicable federal, state, and parish law regarding nondiscrimination in service delivery and/or employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, disabled veteran, veteran status, or any other nonmerit factor.

B. The CAHSD shall maintain a property control system of all movable property in the possession of the CAHSD that was formally under the control of DHH, and of all additional property acquired.

C. For purposes of purchasing, travel reimbursement, and securing of social service/professional contracts, the CAHSD shall utilize established written bid/RFP policies and procedures. Such policies and procedures shall be developed in adherence to applicable statutory and administrative

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 24:

16	707
17	741
18	789
18+	See Note 1

§1165. Gifts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 233.20 (a)(3)(iv)(F) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:279 (April 1989), repealed by the Office of Family Support, LR 24:

§1167. Bona Fide Loans

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 233.20 (a)(3)(iv)(B) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:393 (May 1989), repealed by the Office of Family Support, LR 24:

§1169. Restricted Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 233.20 (a)(3)(ii)(C) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:321 (May 1983), repealed by the Department of Social Services, Office of Family Support, LR 24:

§1171. Need Pretest

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402), 45 CFR 205-206, 233-234 and P.L. 104-193.

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 24:

§1174. Flat Grant Amounts

Number of Persons	Flat Grant Amount
1	\$ 72
2	138
3	190
4	234
5	277
6	316
7	352
8	391
9	427
10	462
11	501
12	540
13	580
14	620
15	662

Note 1: To determine the amount for households exceeding 18 persons, the flat grant amount for the number in excess of 18 is added to the flat grant amount for 18 persons.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§1175. Payment Amount

The budgetary deficit is the amount remaining after subtracting applicable income from the total assistance needs (flat grant amount). Round down to the next lower dollar of the budgetary deficit to determine the payment amount. Prorate the initial assistance payment from the date of application if otherwise eligible.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-248, F.R. 47:41108 et seq., and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:648 (December 1982), amended by the Department of Social Services, Office of Family Support, LR 24:

§1177. Failure to Report Change in Earned Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402), 45 CFR 205-206, 233-234, and P.L. 104-193.

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 24:

Subchapter D. Dependent Children of Unemployed Parents

§1179. AFDC-UP Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 100-485, R.S. 46:238(C) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 16:772 (September 1990), repealed by the Office of Family Support, LR 24:

Subchapter F. Assignments of Rights to Support and Cooperation in Establishing Paternity and Securing Support

§1184. Failure to Cooperate with IV-D

A. Failure to cooperate includes, but is not limited to, the following instances where good reason for failing to cooperate has not been established by the IV-D office:

1. failure to keep two consecutive appointments;
2. failure or refusal to cooperate at an interview;
3. failure to appear for, or cooperate during, a court date or genetic testing.

B. The recipient who has failed to cooperate will be notified in writing of the sanctioning. The recipient's desire or intention to cooperate will not preclude case closure.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

AUTHORITY NOTE: Promulgated on accordance with 45 CFR 233.10, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:551 (August 1983), repealed by the Department of Social Services, Office of Family Support, LR 24:

§1137. Minor Parents

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 233.20 (a)(3)(xviii) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:678 (October 1986), amended by the Department of Social Services, Office of Family Support, LR 22:1233 (December 1996), repealed LR 24:

§1139. Alien Sponsors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369, F.R. 49:35586 et seq., and P.L. 104-193.

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 24:

Subchapter C. Need and Amount of Assistance

§1147. Allowance for Cost of Divorce

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 205.52 and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Louisiana Health and Human Resources Administration, Division of Family Services, LR 1:494 (November 1975), repealed by the Department of Social Services, Office of Family support, LR 24:

§1150. Income

Income is any gain or benefit to a household that has monetary value and is not considered a resource. Count all income in determining eligibility and payment amounts except income from:

1. adoption assistance;
2. earned income of a child, including a minor unmarried parent, who is in school and working toward a high school diploma, GED, or special education certificate;
3. disaster payments;
4. Domestic Volunteer Service Act;
5. Earned Income Credits (EIC);
6. education assistance;
7. energy assistance;
8. foster care payments;
9. monetary gifts up to \$30 per calendar quarter;
10. Agent Orange Settlement payments;
11. HUD payments or subsidies other than those paid as wages or stipends under the HUD Family Investment Centers Program;
12. income in-kind;
13. Indian and Native Claims and Lands;
14. irregular and unpredictable;
15. lump sum payments;
16. nutrition programs;
17. job training income that is not earned;
18. relocation assistance;
19. a bona fide loan which is considered bona fide if the client is legally obligated or intends to repay the loan;

20. Supplemental Security Income;
21. Wartime Relocation of Civilians Payments;
22. Developmental Disability Payments;
23. Delta Service Corps post service benefits paid to participants upon completion of the term of service if the benefits are used as intended for higher education, repayment of a student loan, or for closing costs or down payment on a home;

24. Americorps VISTA payments to participants (unless the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage);

25. Radiation Exposure Compensation Payments;
26. payment to victims of Nazi persecution; or
27. restricted income received for a person not in the assistance unit or not in the income unit. Restricted income is income which is designated specifically for a person's use by federal statute or court order and may include RSDI, VA benefits and court ordered support payments.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-93.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§1151. Lump Sum Payments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 973-35, P.L. 100-485 (Section 402), 45 CFR 205-206, 233-234 and P.L. 104-193.

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 24:

§1153. Earned Income Tax Credit

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402), 45 CFR 205-206, 233-234, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), repealed by the Office of Family Support, LR 24:

§1155. Earned Income of Full-Time Students

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369, F.R. 49:35586 et seq., and P.L. 104-193.

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 24:

§1159. Foster Care Payments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 233.20 (a)(3)(vii) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Health and Human Resources Administration, Division of Family Services, LR 2:111 (April 1976), repealed by the Department of Social Services, Office of Family Support, LR 24:

§1161. Training Allowance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402), 45 CFR 205-206, 233-234, and P.L. 104-193.

allowable for an assistance unit is \$2,000. All resources are considered except:

1. home property, covered by homestead exemption;
2. burial insurance, prepaid funeral plans or prepaid funeral agreements;
3. one burial plot for each member of the assistance unit;
4. personal property;
5. inaccessible resources;
6. life insurance;
7. livestock used for home produce;
8. trust funds if all of the following conditions are met:
 - a. the trust arrangement is unlikely to end during the certification period and no household member can revoke the trust agreement or change the name of the beneficiary during the certification period;
 - b. the trustee of the fund is either a court, institution, corporation, or organization not under the direction or ownership of a household member, or a court-appointed individual who has court-imposed limitations placed on the use of the funds;
 - c. the trust investments do not directly involve or help any business or corporation under the control, direction, or influence of a household member. Exempt trusts established from the household's own funds if the trustee uses the funds only to make investments on behalf of the trust or to pay the education or medical expenses of the beneficiary;
9. disaster payments;
10. energy assistance payments;
11. Agent Orange Settlement Payments income;
12. Housing and Urban Development (HUD) payments and subsidies including HUD community development block grant funds;
13. Indian and Native Claims and Lands Payments received under Public Laws 92-254, 93-134, 94-540, Section 6 of Public Law 94-114 (89 Stat. 577, 25 U.S.C. 459e), tax-exempt portions made pursuant to Public Law 92-203, the Alaska Native Claims Settlement Act, and Public Law 98-123 or Public Law 98-124;
14. Women, Infants and Children (WIC) Program benefits;
15. relocation assistance;
16. Supplemental Security nonrecurring lump sum retroactive payments in the month paid or the following month;
17. Wartime Relocation of Civilians Payments;
18. payments to victims of Nazi persecution;
19. real property which the family is making a good faith effort to sell;
20. one vehicle for each assistant unit;
21. an Individual Development Account (IDA) which is a special account established in a financial institution for the purposes of work-related education or training. Only one IDA per assistance unit is allowed. The amount of the deposits cannot exceed \$6,000, excluding interest, and the balance of the account cannot exceed \$6,000, including interest, at any time. Deposits to the account may be made by the recipient, by a nonprofit organization, or by an individual contributor. The Office of Family Support is not responsible for enforcing

stipulations placed on the use of the money by a nonprofit organization or by an individual contributor. Individual Development Account funds may be used only for the following purposes:

- a. educational expenses incurred at an accredited institution of higher education;
- b. training costs incurred for a training program approved by the agency; and
- c. payments for work-related expenses such as clothing, tools or equipment approved by the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:443, R.S. 46:460.4 and P.L. 104-193.

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 24:

§1119. Dependent Child Age Limit

A. Under 16 years of age.

B. Sixteen to 19 years of age either in school and working toward a high school diploma, GED, or special education certificate or participating in the FIND Work Program.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

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 24:

§1127. Extension of Medicaid Coverage and Work Transition Status

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369, F.R. 49:35586 et seq., and P.L. 104-193.

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 24:

§1131. Ineligibility Based on Lump Sum Income

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369, F.R. 49:35586 et seq., and P.L. 104-193.

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 24:

§1133. Standard Filing Unit

The mandatory filing unit is being redefined to include the child, the child's siblings (including half and stepsiblings) and the parents (including legal stepparents) of any of these children. In the case of the child of a minor parent, the filing unit shall include the child, the minor parent, the minor parent's siblings (including half and step) and the parents of any of these children. Supplemental Security Income recipients are excluded from this requirement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Family Support, LR 23:79 (January 1997), LR 24:

§1135. Natural, Nonlegal, Incapacitated Fathers

Repealed.

- 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)
This action will affect a small number of current and future applicants who as aliens may not have been eligible for benefits. The agency is unable to give an estimate as there is no way to determine the number of persons involved.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9711#063

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), FIND Work Program and Refugee Cash Assistance—Eligibility Conditions (LAC 67:III.Chapter 11, and §§1503, 2909, 3701-3710)

The Department of Social Services, Office of Family Support, proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subparts 2, 5 and 7.

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. In order to meet the increasing demands of welfare reform, the agency recognizes that technical eligibility determination activities must be reduced in order to facilitate staff's ability to concentrate on employment related activities. These new and revised regulations represent a move toward simplification by the agency.

This proposed rule is also to strengthen the process of sanctioning for failure to comply with participation requirements in the Family Independence Work Program (FIND Work). Additionally, changes in FITAP regulations necessitate revisions in the Refugee Cash Assistance Program.

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 A. Application, Determination of Eligibility, and Furnishing Assistance

§1101. Application Date

All individuals applying for FITAP shall be considered applicants for assistance and shall file a written and signed

application form. The date the application form is received in the parish office shall be considered their date of application. If determined eligible, benefits shall be prorated from the date of application.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:8 (January 1984), amended by the Department of Social Services, Office of Family Support, LR 24:

§1103. Application Time Limit

The time within which the worker shall dispose of the application is limited to within 30 days from the date on which the signed application is received in the local office. The applicant shall have benefits available through Electronic Benefits Transfer (EBT), be mailed his first payment or notified that he has been found ineligible for a grant by the thirtieth day, unless an unavoidable delay has occurred.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:342 (April 1984), amended by the Department of Social Services, Office of Family Support, LR 24:

§1105. Certification Period and Reapplication

A. Certification periods of a set duration will be assigned. In order to continue to receive benefits, the household must timely reapply and be determined eligible. If the payee fails, without good cause, to keep a scheduled appointment, the case will be closed without further notification. Also, if during the application process, a change is reported which results in a determination of ineligibility or a reduction in benefits, this change will be made effective the following month.

B. The Office of Family Support will require an official reapplication for benefits and prorate benefits from the date of application following a period of ineligibility.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:864 (September 1985), amended by the Department of Social Services, Office of Family Support, LR 24:

§1107. Effective Payment Date for AFDC and RCA

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 206.10, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:753 (August 1985), amended LR 11:1078 (November 1985), repealed by the Department of Social Services, Office of Family Support, LR 24:

§1111. Protective Payments

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 98-369 and F.R. 49:35586 et seq., P.L. 104-193.

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 24:

Subchapter B. Conditions of Eligibility

§1115. Resources

Resources are assets or possessions which a household can convert to cash to meet needs. The maximum resource

d. the status as a spouse or child of a United States citizen pursuant to clause (i) of §204(a)(1)(A) of the INA, or classification pursuant to clause (i) of §204(a)(1)(B) of the INA;

9. an alien child or the alien parent of a battered alien as described in §1141.A.8.

B.1. - 2. ...

3. the alien's deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

4. the alien is a *Cuban* or *Haitian* entrant, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

5. the alien is an *Amerasian* immigrant admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;

6. the alien is lawfully residing in the United States and is a *veteran* (as defined in §§101, 1101, or 1301, or as described in §107 of Title 38, *United States Code*) who is honorably discharged for reasons other than alienage and who fulfills the minimum active-duty service requirements of §5303A(d) of Title 38, *United States Code*; his spouse or the unremarried surviving spouse if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*; and unmarried dependent children; or

7. the alien is lawfully residing in the United States and is on active duty (other than for training) in the Armed Forces and his spouse or the unremarried surviving spouse, if the marriage fulfills the requirements of §1304 of Title 38, *United States Code*, and unmarried dependent children.

C. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:48687 et seq., P.L. 104-193, P.L. 104-208, and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Eligibility Determinations, LR 14:280 (May 1988), LR 14:438 (July 1988), amended by the Department of Social Services, Office of Family Support, LR 23:448 (April 1997), LR 24: §1143. **Income and Resources of Alien Sponsors**

In determining eligibility and benefit amount for an alien other than those identified in §1141.A.8 and 9, the income and resources of his/her sponsor and the sponsor's spouse must be considered. The income and resources of an alien sponsor and the sponsor's spouse shall not apply to benefits during a 12-month period for those aliens identified in §1141.A.8 and 9. After a 12-month period, only the income and resources of the batterer shall not apply if the alien demonstrates that such battery or cruelty has been recognized in an order of a judge or administrative law judge or a prior determination of the INS, and the agency determines that such battery or cruelty has a substantial connection to the need for benefits. A *sponsor* is defined as any person who executed an affidavit of support pursuant to §213A of the Immigration and Nationality Act on behalf of the alien. The income and resources of the sponsor and the sponsor's spouse shall apply until the alien:

1. achieves United States citizenship through naturalization; or

2. has worked 40 qualifying SSA quarters of coverage, or can be credited with such qualifying quarters, and in the

case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefit during any such period. In determining the number of qualifying quarters of coverage an alien shall be credited with:

a. all of the qualifying quarters of coverage worked by a parent of such alien while the alien was under age 18; and

b. all of the qualifying quarters worked by a spouse of such alien during their marriage, and the alien remains married to such spouse or such spouse is deceased.

c. No such qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien under §1143.A.2.a or b if the parent or spouse of such alien received any federal means-tested public benefit (as provided under §403) during the period for which such qualifying quarter of coverage is so credited. Notwithstanding §6103 of the *Internal Revenue Code* of 1986, the commissioner of Social Security is authorized to disclose quarters of coverage information concerning an alien and an alien's spouse or parents to a government agency for the purposes of this title.

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (§402) and 45 CFR 205-206,233-234, P.L. 104-193, P.L. 104-208, and P.L. 105-33.

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 23:448 (April 1997), LR 24:

Interested persons may submit written comments within 30 days of this publication 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 December 29, 1997 at the Department of Social Services, 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)—Alien Eligibility**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The costs to state government for FITAP benefits for aliens who would have otherwise been ineligible are anticipated to be minimal. There are sufficient funds allocated in FY 97/98 to cover the routine implementation costs of publishing the proposed rule and printing policy revisions. No effect is anticipated on local governmental units.

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: Vehicle Registration License Tax**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no savings or cost to state or local governments. These proposed rules amend LAC 55:III.Chapter 3, Subchapter B, §§351, 355 and 365 to allow for a more consistent means of assessing the value of motor vehicles for the annual registration license tax under R.S. 47:463(A). The proposed rules reflect the current policies of the Department of Revenue regarding the collection of sales taxes. The collection of all taxes will be made simpler as the vehicle registration license tax will be calculated in the same manner as the sales taxes. Additionally, the loan value is essentially the same as 75 percent of the book value which is the valuation method currently used. This change will eliminate the step of calculating 75 percent of the book value when assessing the vehicle registration license tax. This tax is not collected by local governments, and as a result these rules should have no impact on government.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on the collection of revenues derived from the vehicle registration license tax, R.S. 47:463(A). The proposed rules reflect the current policies of the Department of Revenue regarding the collection of sales taxes. The collection of all taxes will be made simpler as the vehicle registration license tax will be calculated in the same manner as the sales taxes. Additionally, the loan value is essentially the same as 75 percent of the book value which is the valuation method currently used. This change will eliminate the step of calculating 75 percent of the book value when assessing the vehicle registration license tax. This proposed amendment will not have any effect on the collection of revenues by local governments as these political subdivisions of the state do not collect the vehicle registration license tax.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Any person who seeks to operate a motor vehicle on the public highways is already paying the vehicle registration license tax. As a result, individuals and companies are already paying this tax. These amendments simply change the manner in which the tax is collected. Since 75 percent of the book value is essentially the same as the loan value, there will be no increase or decrease in the assessed tax.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed amendments have no effect on competition and employment. As this tax is already being assessed and collected, and since the manner of assessment is being changed just to be consistent with the way the Department of Revenue assesses local sales taxes, it should have no effect on competition and employment.

Thomas H. Normile
Undersecretary
9711#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)—Alien Eligibility (LAC 67:III.1141 and 1143)

The Department of Social Services, Office of Family Support proposes to amend LAC 67:III.1141 and 1143, pertaining to the Family Independence Temporary Assistance Program (FITAP), which has replaced the Aid to Families with Dependent Children (AFDC) Program.

Pursuant to provisions of Public Law 104-208, the United States' Omnibus Consolidated Appropriations Act and Public Law 105-33, the Balanced Budget Act of 1997, changes in FITAP regulations concerning the eligibility of certain noncitizens are required. This proposed rule is necessary to effect these mandated regulations.

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 A. Application, Determination of Eligibility, and Furnishing Assistance

§1141. Eligibility Requirements for Aliens

A.1. - 4. ...

5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241(b)(3) of such Act (as amended by §305(a) of Division C of Public Law 104-208);

6. an alien who is granted conditional entry pursuant to §203(a)(7) of such Act, as in effect prior to April 1, 1980; or

7. an alien who is a *Cuban* or *Haitian* entrant, as defined in §501(e) of the Refugee Education Assistance Act of 1980;

8. an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse's or parent's family residing in the same household as the alien if the spouse or parent consented to, or acquiesced in, such battery or cruelty. The individual who has been battered or subjected to extreme cruelty must no longer reside in the same household with the individual who committed the battery or cruelty. The agency must also determine that a substantial connection exists between such battery or cruelty and the need for the benefits to be provided. The alien must have been approved or have a petition pending which contains evidence sufficient to establish:

a. the status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of §204(a)(1)(A) of the Immigration and Nationality Act (INA); or

b. the classification pursuant to clause (ii) or (iii) of §204(a)(1)(B) of the INA; or

c. the suspension of deportation and adjustment of status pursuant to §244(a)(3) of the INA; or

If the total of the proven damages and the sales price is within \$1,000 of the full loan value as determined in §355.B, the vehicle shall be valued according to the sales price. If the total of the proven damages and the sales price differs by more than \$1,000 from the full loan value as determined in §355.B, the value of the motor vehicle shall be determined by deducting the proven damages from the full loan value as determined in §355.B;

b. upon a showing of good cause by the person applying to register the damaged motor vehicle, the assistant secretary or his designee may assign a value other than the value established pursuant to §355.B. The applicant for registration shall provide the department with such documentation as is necessary to justify this alternative valuation;

2. if the seller is a licensed new or used motor vehicle dealer, then the dealer or an employee of such dealer shall submit an affidavit specifying the nature of the damage and the sale price. The assistant secretary or his designee may require additional information or documentation to determine the value of the motor vehicle. Upon review of all documentation and information, the assistant secretary or his designee shall calculate the value of the motor vehicle in the same manner and under the same conditions as provided in §355.C.1.

D. Motor vehicles, the ownership of which is reacquired by the original owner within a period of two years from date of original acquisition, shall be registered at the original value upon renewal or registration by the original owner. Upon a showing of good cause by the person seeking to register the motor vehicle, the assistant secretary of the Office of Motor Vehicles may permit the vehicle to be valued as provided in §355.B-C, as the case may be.

E. Additional documentation may be required of any applicant for license or registration, including renewals, by the assistant secretary of the Office of Motor Vehicles or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:1324 (October 1997), amended LR 24:

§365. Valuation of Motor Vehicles Awarded Pursuant to a Judgment of a Court of Limited Jurisdiction

A. The following guidelines shall be used when determining the value of a motor vehicle, the ownership of which is acquired pursuant to a written judgment of a trial court of limited jurisdiction:

1. if the written judgment or the written reasons for judgment do not indicate that the court made a determination as to the value of the motor vehicle, the value shall be determined pursuant to §355;

2. if the written judgment or the written reasons for judgment contain a determination as to the value of the motor vehicle, and such value is not less than the value of the vehicle as determined in §355, then the motor vehicle shall be valued at such amount for purposes of collecting the vehicle registration license tax;

3. if the written judgment or the written reasons for judgment contain a determination as to the value of the motor vehicle, and such value is less than the value of the vehicle as determined in §355, then the following shall apply:

a. if the judgment or reasons for judgment contain specific factual findings as to why that particular value was assigned to the motor vehicle, then the motor vehicle shall be valued at such amount for purposes of collecting the vehicle registration license tax;

b. if the judgment or reasons for judgment do not contain specific factual findings as to why that particular value was assigned to the motor vehicle, then the motor vehicle shall be valued pursuant to §355.B;

4. any judgment that is not reduced to writing shall not be used in the determination of the value of the motor vehicle for purposes of this Subchapter;

5. if the person submitting the application to register the motor vehicle refuses to pay the vehicle registration license tax as required in §365, the department shall deny or refuse the transaction.

B. No judgment shall be processed for purposes of titling or registering a motor vehicle unless the written judgment or the written reasons for judgment contain the following information:

1. the make, mode, and model year of the motor vehicle;

2.a. the vehicle identification number of the motor vehicle, chassis number, or serial number as assigned by the manufacturer; or

b. the state police vehicle number assigned by a commissioned Louisiana state trooper after a physical inspection of the vehicle if the vehicle does not have a vehicle identification number assigned by the manufacturer;

3. the full name of each person or business entity in which the vehicle is to be titled and registered;

4. the full name of each person or business entity who sold, transferred, or otherwise assigned the vehicle to the persons or businesses required to be listed by §365.B.3;

5. the full price or other consideration given in exchange for the vehicle;

6. the date the sale, transfer or assignment occurred;

7. a statement as to whether any outstanding liens on the vehicle, which have been recorded with the Office of Motor Vehicles, have been released.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:1325 (October 1997), amended LR 24:

Persons having comments or inquiries may contact Stephen A. Quidd, attorney for the Office of Motor Vehicles at Box 66614, Baton Rouge, LA 70896, (504)925-4068, or by FAX to (504) 925-3974. These comments and inquiries should be received by December 22, 1997.

A public hearing on these rules is currently scheduled for Tuesday, December 30, 1997, at 9 a. m. in the Middle Management Conference Room at the Office of Motor Vehicle Headquarters at 109 South Foster Drive,

B. Petitions referred to in §116.A shall be in writing and filed with the board at its office in Baton Rouge.

C. Petitions filed with the board in accordance with §116 shall be disposed of promptly.

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 24:

All interested persons may contact Tom Warner, Deputy Director, Attorney General's Gaming Division, at (504) 342-2465, and may submit written comments relative to these proposed rules through December 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: Appeals; Petitions for Declaratory Orders and Rulings, Statutes and Rules

- 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
9711#042

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of Motor Vehicles

Vehicle Registration License Tax (LAC 55:III.351, 355, and 365)

The Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles hereby gives notice of intent to amend LAC 55:III.351, 355, and 365 pertaining to the annual registration license tax for motor vehicles. Currently, the value of motor vehicles for the purpose of initial and subsequent registration is based on 75 percent of the retail value contained in the *N.A.D.A. Official Used Car Guide*. The proposed rule would base the vehicle registration license tax on the full loan value of the N.A.D.A. guidelines which would be consistent with the Department of Revenue's

method of assessing the value of motor vehicles for purposes of collecting state sales taxes.

Title 55 PUBLIC SAFETY Part III. Motor Vehicles

Chapter 3. License Plates Subchapter B. Vehicle Registration License Tax §351. Definitions

As used in this Subchapter, the following terms have the meanings described below:

* * *

Low Bills of Sale—values determined to be below the full loan value as shown by the most current *N.A.D.A. Official Used Car Guide, South-Western Edition* (or its successor).

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:463(A)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 23:1323 (October 1997), amended LR 24:

§355. Valuation of Motor Vehicles for Purposes of Initial and Subsequent Registration on or after January 1, 1990

A. Except in cases of damaged motor vehicles, donations, out-of-state transfers, or low bills of sale, the value of the motor vehicle shall be determined by the purchase price as indicated on the bill of sale or invoice.

B. In the case of donations, out-of-state transfers, or low bills of sale, the value shall be determined and based upon the full loan value contained in the most current *N.A.D.A. Official Used Car Guide, South-Western Edition* (or its successor) as maintained by the Office of Motor Vehicles. In the case of classic automobiles or other automobiles of particular interest not included in the *N.A.D.A. Official Used Car Guide, South-Western Edition* (or its successor), the full loan value shall be determined by reference to the *N.A.D.A. Official Older Used Car Guide* or the *Value Guide to CARS of Particular Interest*. If the value of the motor vehicle cannot be determined by reference to any of these three guide books, the actual value of the motor vehicle shall be determined by the Office of Motor Vehicles based upon such information supplied by the person seeking to register the vehicle and such information that may be required from such person by the assistant secretary or his designee.

C. The valuation of a damaged motor vehicle shall be the value of the motor vehicle at time of acquisition as determined pursuant to §355.C.1.-2. The following must be presented to the Office of Motor Vehicles to establish an actual value on such a vehicle of less than the full loan value:

1.a. an affidavit by the seller or transferor of the motor vehicle specifying in detail the nature of damage to the vehicle and a written invoice from a bona fide mechanic or repairman showing a detailed estimate of the cost of repair to said vehicle. The assistant secretary or his designee may require additional information or documentation to determine the value of the motor vehicle. Upon review of all documentation and information, the assistant secretary or his designee may add the proven damages to the sales price of the motor vehicle as is reflected in the bill of sale submitted in connection with the application to register the motor vehicle.

4. At the conclusion of the execution, the coroner or his deputy shall pronounce the inmate dead. The deceased shall then be immediately taken to an awaiting ambulance for transportation to a place designated by the next of kin, or in accordance with other arrangements made prior to the execution.

5. The warden will make a written report reciting the manner and date of the execution which he and all of the witnesses will sign. The report shall be filed with the clerk of court in the parish where the sentence was originally imposed [R.S. 15:571].

6. No employee, including employee witnesses to the execution, except the secretary or the warden or their designee, shall communicate with the press regarding any aspect of the execution, except as required by law.

AGREEMENT BY WITNESS TO EXECUTION

I, _____, a person of full age and majority, and a citizen of the state of Louisiana, hereby agree to the following conditions precedent to being a witness to the execution of a sentence of death at Louisiana State Penitentiary, Angola, LA:

1. I agree that my presence at the execution is voluntary.
2. I agree to sign the report of the execution, as required by law.
3. I agree to comply with all rules and regulations of the Department of Public Safety and Corrections and the Louisiana State Penitentiary during the course of the proceedings leading up to, during, and after the completion of the execution.
4. I agree that I will not electronically record or photograph any activities while I am present in the lethal injection room.
5. I agree to submit to a search of my person before and after the execution, if requested to do so by the warden of the Louisiana State Penitentiary.
6. If I am a member of the press selected as a witness to the execution, I agree to act as a pool reporter for the media representatives not present at the execution, and I agree to meet with all media representatives present at the penitentiary immediately after the execution.
7. If I am an employee of the Department of Public Safety and Corrections, I agree that I will make no public statements about the execution without prior approval of the warden of the Louisiana State Penitentiary.

I have read the above agreement, understand it, and have signed it in the presence of the listed witnesses on this date _____
(Day, Month, Year)

WITNESSES TO SIGNATURE:

Selected Witness to Execution

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:567-15:571.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of the Secretary, LR 6:10 (January 1980), amended LR 7:177 (April 1981), amended by the Department of Public Safety and Corrections, Corrections Services, LR 17:202 (February 1991), LR 18:77 (January 1992), LR 24:

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 December 20, 1997.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Death Penalty**

- 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 carry out executions during the hours of 6 p.m. until 11:59 p.m. Since the rule only changes the time executions can be carried out, 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 or 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
9711#015

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Appeals; Petitions for Declaratory
Orders and Rulings, Statutes and Rules
(LAC 42:III.115 and 116)

The Gaming Control Board hereby gives notice that it intends to adopt LAC 42:III.115 and 116 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 and Scope

§115. Appeals to the Board

Appeals to the board from a decision of a hearing officer shall be decided by the board. The appeal shall be decided on the record by a majority of a quorum of the board or a majority of a panel of three members of the board.

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 24:

§116. Petition for Declaratory Orders and Rulings, Statutes and Rules

A. Any interested person may file a petition for a declaratory order or ruling as to the applicability of any statutory provision or as to the applicability or validity of any rule or order of the board.

B. Responsibility. Assistant secretary/Office of Adult Services and the wardens of the Louisiana State Penitentiary and the Louisiana Correctional Institute for Women.

C. Incarceration Prior to Execution. Male inmates sentenced to death shall be incarcerated at the Louisiana State Penitentiary at Angola, Louisiana. Female inmates sentenced to death shall be incarcerated at the Louisiana Correctional Institute for Women at St. Gabriel, Louisiana. Until the time for execution, the warden shall incarcerate the inmate in a manner affording maximum protection to the general public, the employees of the department, and the security of the institution. Female inmates shall be transported to the Louisiana State Penitentiary on the day immediately prior to the execution date.

D. Visits

1. During the final 72 hours before the scheduled execution, the warden may approve special visits for the condemned inmate.

2. All visits will terminate by noon on the day of the execution except visits with a priest, minister, religious advisor, or attorney, which will terminate at the direction of the warden or his designee.

E. Media Access

1. Reporters with the proper credentials may contact the warden's office to request interviews. If the warden, inmate, and attorney (if represented by counsel) consent, the interview shall be scheduled for a time convenient to the institution.

2. Should the demand for interviews be great, the warden may set a day and time for all interviews to be conducted and may specify whether interviews will be done individually or in "press conference" fashion.

F. Pre-Execution Activities

1. The warden shall select appropriate areas to serve as a press room and for any mobile press units.

2. The execution room shall be off limits to unauthorized inmates and employees from 8 a.m. on the day preceding the execution until such time after the execution as the warden deems appropriate. The execution room shall also be off limits to the public and press five days before the execution until such time after the execution as the warden deems appropriate.

3. All persons selected as witnesses will sign copies of the witness agreement prior to being transported to the execution room.

G. Execution Time and Place. The execution shall take place at the Louisiana State Penitentiary between the hours of 6 p.m. and 11:59 p.m. [R.S. 15:570(B)].

H. Witnesses

1. The execution shall take place in the presence of the following witnesses:

- a. the warden of the Louisiana State Penitentiary or designee;
- b. the coroner of West Feliciana Parish or deputy;
- c. a physician chosen by the warden;
- d. a competent person selected by the warden to administer the lethal injection; and
- e. a priest, minister, or religious advisor, *if the inmate so requests.*

2. Not less than five, nor more than seven other witnesses are required by law to be present [R.S. 15:570(A)]. These witnesses will be selected as follows:

a. three witnesses will be members of the news media;

i. a representative from the Associated Press;

ii. a representative, selected from the media persons requesting to be present, from the parish where the crime was committed; and

iii. one representative selected from all other media persons requesting to be present;

iv. these witnesses must agree to act as pool reporters for the remainder of the media present and meet with all media representatives immediately following the execution;

b. two witnesses may be members of the victim's family, if requested;

i. the number of victim-relationship witnesses may be limited to two. If more than two victim-relationship witnesses desire to attend the execution, the secretary is authorized to select from the interested parties the two victim-relationship witnesses who will be authorized to attend [R.S. 15:570(B)].

ii. at least 10 days prior to the execution, the secretary shall give written notice of the date and time of execution to the victim's parents, or guardian, spouse, and any adult children who have indicated to the secretary that they desire such notice. The named parties shall be given the option of attending the execution and shall, within three days of their receipt of the notification, notify, either verbally or in writing, the secretary's office of their intention to attend [R.S. 15:570(B)];

c. the remaining witnesses (a minimum of two and a maximum of four, depending upon the number of witnesses designated under §103.H.2) will be selected by the secretary from persons whom he feels have a legitimate interest in being present;

d. all witnesses must be residents of the state of Louisiana and over 18 years of age; and all must agree to sign the report of the execution [R.S. 15:570-571];

e. no cameras or recording devices, either audio or video, will be permitted in the execution room.

I. Procedures

1. The witnesses will enter the witness room where they will receive a copy of the inmate's written last statement, if a written statement is issued.

2. The inmate will then be taken to the lethal injection room by the escorting officers. Once in the room, the inmate will be afforded the opportunity to make a last verbal statement, if he so desires. He will then be assisted onto the lethal injection table and properly secured to the table by the officers. Once the officers exit the room, the warden will close the curtain to the witness room and signal the I.V. technician to enter. The I.V. technician will appropriately prepare the inmate for execution and exit the room. The warden will reopen the witness room curtain.

3. The person designated by the warden and at the warden's direction, will then administer, by intravenous injection, a substance or substances, in a lethal quantity, into the body of the inmate until he is deceased.

B. The secretary shall be authorized to recover the removal and restoration costs from the owner of the underwater obstruction.

C. The state shall be exempt from the provisions of this Part.

D. The secretary, the assistant secretary, and their agents shall not be liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D) - 4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§329. Liability

The secretary or assistant secretary shall not be liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D) - 4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

§331. Annual Report

A. The assistant secretary shall submit to the Senate and House of Representatives Committees on Natural Resources, before March 1, an annual report that reviews the extent to which the program has enabled the assistant secretary to better protect the navigable waters and commercial fishing of the state and enhance the income of the fund.

B. The assistant secretary's annual reports shall include:

1. the number and location of underwater obstructions which have been identified and inventoried, and a list of those obstructions which have been successfully removed during the preceding year, to include the cost of removal of each;

2. the overall status of implementation of the provisions of this Part relating to the identification, inventory, and removal of underwater obstructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4(D) - 4(H) and 30:101.4.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Revised Statutes of 1950, a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA at 9 a.m., December 30, 1997. At such hearing the commissioner of Conservation will consider evidence relative to the proposed regulations for the underwater obstructions removal program. The proposed regulations represent the views of the commissioner as of this date; however, the commissioner reserves the right to make additions or amendments prior to final adoption.

Comments and views regarding the proposed regulations should be directed, in written form, to Mariano G. Hinojosa, to be received no later than 5 p.m., December 29, 1997. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. If accommodations are required under the Disabilities Act, please contact the Pipeline Division at (504)

342-5516, within 10 working days of the hearing date. Direct comments to Warren A. Fleet, Commissioner of Conservation, Box 94275, Capitol Station, Baton Rouge, LA 70804-9275 and refer to Docket Number PL 97-136. All parties having interest in the aforesaid shall take notice.

Warren A. Fleet
Commissioner and Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Underwater Obstructions Removal Program

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be an increase in cost for the 1997-98 fiscal year. These monies come from Hurricane Andrew federal disaster funds. The three-year program will expend about \$427,000 per year.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed amendments will have 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)
The proposed amendments will result in substantial economic benefits to directly affected fishermen and boaters in Louisiana. Removal of underwater obstructions will make Louisiana waters safer to traverse.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed amendments will not have any effect on competition and employment.

Mariano G. Hinojosa
Director of Pipelines
9711#061

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Death Penalty (LAC 22:I.103)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to implement R.S. 15:567-571, the Department of Public Safety and Corrections, Corrections Services hereby gives notice of intent to adopt regulations dealing with the death penalty.

This proposed rule was adopted as an emergency rule effective September 15, 1997 and appeared on page 1264 of the October 1997 *Louisiana Register*.

TITLE 22 CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT Part I. Corrections

Chapter 1. Secretary's Office

§ 103. Death Penalty

A. Purpose. To set forth procedures to be followed for the lethal injection of those individuals sentenced to death.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Bobby Jindal
Secretary
9711#060

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**

Ambulatory Surgical Centers (LAC 48:I.4561)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the licensing regulations for ambulatory surgical centers as established by R.S. 40:2131-2141. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Human Resources adopted regulations governing the licensing of Ambulatory Surgical Centers, which were published in the *Louisiana Register*, Volume 13, Number 4 and in the *Louisiana Administrative Code*, Volume 8, Title 48, Book 1, 1987. The current regulations require the housekeeping staff of ambulatory surgical centers to perform periodic checks to assure a safe environment. In addition, the centers are required to maintain written procedures relative to periodic processing of cultures in critical areas of vulnerability and sensitivity in order to guard against infection and contamination.

Since the periodic processing of cultures is now considered to be an antiquated practice, the department has decided to repeal this requirement. Therefore, the Department of Health and Hospitals amends the current rule by removing §4561.I.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 45. Ambulatory Surgical Center

§4561. Housekeeping

A. - H. ...

I. Repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2143.

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 Health and Hospitals, Office of the Secretary, LR 24:

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

A public hearing on this proposed rule is scheduled for Monday, December 29, 1997 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bobby P. Jindal
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Ambulatory Surgical Centers**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will result in state costs of \$80 for SFY 1997 for the state's administrative expense of promulgating this proposed rule as well as the final rule. No additional costs are anticipated for SFY 1998 and SFY 1999.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on federal revenue collections. However, the federal share of promulgating this proposed rule as well as the final rule is \$80.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no cost or economic benefit to persons or nongovernmental groups. However, there are costs of \$160 for promulgating this proposed rule as well as the final rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9711#047

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

**Underwater Obstructions Removal
Program (LAC 43:XI.301 and 315-331)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby proposes to amend the Underwater Obstructions regulations.

Agency	T.O.	S.G.F.	Title XIX	Title XVIII	Block Grant	MCH Grant	Preventive Grant	Categorical Grant	Local	Self Generated	Path Grant	Other	Total
OPH	0												0
OMH	0												0
OCDD	0	264,056	11,968									7,083	283,107
OADA	0			90,000									90,000
OM&F	0												0

**Addendum to
Memorandum of Understanding
Between the Department of Health and Hospitals and
The Capital Area Human Services District
FY 97/98**

This addendum to the memorandum of understanding is entered into, by and between the Department of Health and Hospitals and the Capital Area Human Services District. Given that the MOU was effected before the conclusion of the 1997 regular session, an amendment is necessary to reflect the programmatic and fiscal directives of that session.

1. Changes in funding that were necessary for the Office of Alcohol and Drug Abuse, Office of Mental Health and for the Office of Citizens with Developmental Disabilities are outlined below:

Agency	T.O.	S.G.F.	Federal Funds	Self Generated	IAT	Stat. Ded.	Total
OADA*	38				3,106,809		3,106,809
OMH	74				7,594,018		7,594,018
OCDD	17	4,229,691			143,544		4,373,235

SOURCE OF FUNDS

Agency	Total IAT	SGF	Title XIX	Title XVIII	Block Grant	MCH Grant	Preventive Grant	Categorical Grant	Path	Other
OADA	3,106,809	762,311	83,391		2,261,107					
OMH	7,594,018	6,275,414	634,096	159,135	419,811				80,414	25,148
OCDD	143,544	25,000	37,620							80,924

* An additional \$225,000 shall be transferred to CAHSD by BA 7. This figure includes funds of \$5000 for SYNAR, \$50,000 for O'Brien House, \$20,000 for Compulsive Gambling and \$150,000 for Drug Court.

**Funding for the Office of Public Health and the Office of Management and Finance remains the same.

2. For purposes of consumer eligibility, residents of East and West Feliciana who meet the DHH Program Office State Plan target population definitions shall have access to services provided by the CAHSD.

Bobby P. Jindal
Secretary
Department of Health and Hospitals

Dr. Jan Kasofsky
Executive Director
Capital Area Human Services Director

Comments regarding the proposed rule should be addressed to John A. LaCour, Deputy Secretary, Department of Health and Hospitals, Box 629, Bin Number 2, Baton Rouge, LA 70821-0629.

A public hearing on this proposed rule will be held on Monday, December 29, 1997 at 10:30 a.m. in the First Floor Auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA 70804.

Bobby P. Jindal
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Memorandum of Understanding Between the
Department of Health and Hospitals and the Capital Area
Human Services District—FY 97/98**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Administrative cost associated with the Capitol Area Human Services District (CAHSD) will be paid by the Department of Health and Hospitals (DHH) for FY 97-98 in accordance with the annual service agreement. Estimated cost of printing the notice of intent and the rule is \$920.

skill to cope and maintain family integrity and to enhance the likelihood that the child with serious emotional disturbance can successfully remain at home. Service elements include planned respite care, wraparound funding, parent education, parent support groups, parent case manager training, cash subsidy, home aide services transportation, and advocacy services.

7. Targeted Case Management

Services provided to eligible consumers to assist them in gaining access to the full range of needed services including medical, social, educational, and other support services.

8. Consultation/Education

These are services which assist other professionals or community members who have regular or frequent contact with the consumer to better understand the consumer's/family's condition or situation, and to respond more effectively/appropriately to that consumer/family's needs and problems. They are often of the nature of explanations of diagnoses, behaviors, or treatment plans/regimens, and suggestions as to how the person can best work to facilitate treatment and not exacerbate the consumer's condition.

9. Day Treatment

This service provides opportunities for teaching new rehabilitative skills to community living and work activities, building networks of peer support, teaching self-help community activities, and providing a place where individuals can learn how to successfully relate to persons and communicate their needs and desires. In addition, these programs provide secure, structured environments where individuals experiencing disruption in routine behaviors brought on by their illness receive treatment and support. Children/Adolescents Day Treatment is an intensive, structured, non-residential program of several hours duration (usually five or more) which provides an integrated set of counseling, behavioral, education and family interventions that enable children to reside at home and to maintain community, school and family ties. Programs may be located in schools or other community facilities.

10. Interagency Coordination

Interweaving of the components of services provided by the various agencies involved in serving the consumer into a coherent and effective system.

11. Prevention/Early Education

These are services oriented to persons who have not been identified as needing clinical treatment/intervention, or whose condition is thought to be able to be arrested by preventive intervention. These services typically involve promotion of positive behaviors and mental health practices, increasing necessary and sufficient supports as a mechanism for preventing deterioration, or training recipients with information regarding recognition and coping effectively with risk factors.

12. Transition Services

Services that assist in the shift from children's services to adult services. Transition services consist of joint planning between personnel in both settings to determine the appropriate services to assist the child a family with the adjustment.

13. Planned Respite

This service provides temporary supervision to individual consumers or groups of consumers in order to provide regular care givers with relief. Services may be provided in the consumer's home or in the respite provider's home or in a facility.

Non-Medical/Social Detoxification: Twenty-four hour/day services in a non-hospital setting that provides for safe withdrawal from alcohol and/or other drugs and transition to appropriate on-going treatment.

OCDD Community Support Services: These are all of the services that OCDD offer to individuals in the community. Such services are 1) tailored to the individual needs of each person requesting a service; and 2) are funded either through state general funds or Medicaid. The primary goal of these services is to create and sustain supports in the community for individuals with developmental disabilities. Such services are as follows:

1. HABILITATIVE SERVICES—emotional, vocational skills and work-related skills for adults with developmental disabilities over the age of 22. Types of habilitative services include:

- a. SUPPORTED EMPLOYMENT GROUP MODELS
- b. FACILITY BASED SERVICES
- c. PRE-VOCATIONAL TRAINING
- d. DAY HABILITATION

2. RESIDENTIAL SERVICES—a range of living options in a Title XIX facility which include the following:

- a. ICF/MR 16+BEDS
- b. GROUP HOMES 7+BEDS
- c. COMMUNITY HOME 6 BED OR LESS
- d. EXTRAORDINARY RATE—Title XIX allowable services in ICF/MR facilities that cannot be met through the per diem rate.

3. SUPPORTED INDEPENDENT LIVING/RESIDENTIAL HABITATION—individually tailored supports provided to a person in his/her home for the purpose of enhancing the quality of life and ensuring their health and safety.

4. SUBSTITUTE FAMILY CARE/EXTENDED FAMILY LIVING—community care for children and adults in family homes providing for the individuals' physical, emotional, educational, habilitative and social needs.

5. RESPITE—temporary, short-term care of individuals who are unable to care for themselves because of the absence or need for relief of the primary caregiver.

6. PCA—services provided for individuals whose disabilities preclude the acquisition of certain independent living skills related to activities of daily living, such as bathing, dressing, grooming and food preparation and storage.

7. PERSONAL EMERGENCY RESPONSE—immediate assistance to an individual in the event of a physical, emotional or environmental emergency through a community-based electronic communications device.

8. ASSISTIVE DEVICE—specialized medical equipment and supplies, and adaptive and communication aids which increase the individuals' ability to communicate and or perform activities of daily living.

9. ENVIRONMENTAL MODIFICATIONS—assessment of the need for and modifications and or improvements to an individuals' home to allow for community living and ensure safety, security, and accessibility.

10. INFANT HABILITATION EARLY INTERVENTION—habilitative services for infants and toddlers, ages birth to three, and their families.

11. CRISIS ASSISTANCE—short term, emergency services for individuals and their families who are in a crisis situation that are provided until the individual's needs can be met through the regular services system.

12. FAMILY TIES—supports to natural families designed to assist them in bringing home a child, age birth to eighteen, from an institution, group or community home, or other residential facility.

13. CASH SUBSIDY BENEFITS—flat monthly payments to the families of children aged birth through seventeen who have severe developmental disabilities.

Office for Alcohol and Drug Abuse—Hereafter referred to as OADA
Office for Citizens with Developmental Disabilities—Hereafter referred to as OCDD

Office of Mental Health—Hereafter referred to as OMH

Office of Public Health—Hereafter referred to as OPH

Outpatient Treatment (Nonintensive): Treatment/recovery/aftercare or rehabilitation services provided where the client does not reside in a treatment facility. The client receives alcoholism and/or drug abuse treatment services with or without medication, including counseling and supportive services.

Primary Prevention: Programs that are directed at individuals who have not been determined to require treatment for substance abuse. "Substance" abuse is defined to include alcohol, tobacco and other drugs ATOD. Prevention Programs will include the following strategies:

1. Information Dissemination
2. Prevention Education
3. Alternative
4. Problem Identification and Referral
5. Community-Based Process
6. Environmental

Addendum

In the event that Livingston Parish is included in the CAHSD, the table below includes the agreed upon resources that shall be transferred to the CAHSD. It shall also be understood that Livingston Parish shall be part of the memorandum of understanding between the DHH and CAHSD.

2. Mental Health Clinic Services

Traditional mental health outpatient services such as diagnostic screening and evaluation, outreach, day treatment, medication management, and psychotherapy (individual, group and family).

2.1 Assessment/Evaluation

A comprehensive assessment/evaluation includes an individualized treatment plan and determines the appropriateness of the program and level of service. As part of the assessment/evaluation, an interdisciplinary team will complete a written report which includes, at a minimum, demographic data and social history, diagnostic information, functional assessment, and other information necessary to determine service need, mix, intensity, and duration.

2.2 Medication Management

An assessment of the need for medications, the prescription of needed medications, and the ongoing management of a medication regimen.

2.3 Psychotherapy (Individual, Group, Family)

A structured, goal-oriented therapeutic process in which an individual interacts with a therapist, or a group of people interact with each other and a therapist, on a face-to-face basis and in accordance with the individual's treatment plan.

3. Crisis Response Systems (CRS) - Includes Acute In-Patient Services

Professional rehabilitation services that provide immediate emergency intervention with the consumer, family, legal guardian, and/or significant others to ameliorate a consumer's maladaptive emotional/behavioral reaction. Services are designed to resolve the crisis and develop symptomatic relief, increase knowledge of where to turn for help at a time of further difficulty, and facilitate return to pre-crisis routing functioning. Crisis Response System services are available 24 hours a day, seven days a week, on a face-to-face basis and have the capacity to provide the following components:

3.1 24-Hour Screening and Assessment

Emergency evaluation and assessment of the level of intervention needed. The comprehensive assessment/evaluation includes the individualized treatment plan and determines the appropriateness of the program as well as the level of services. An interdisciplinary team performs the evaluation and provides a written report which includes: demographic data and social history, diagnostic information, functional assessment, and other information necessary to determine service need and intensity.

3.2 In-Home Crisis Services

Services available in the community seven days a week, 24-hours a day to provide structural support necessary to stabilize a person in the home while experiencing acute symptoms of mental illness/or emotional distress. Services reduce the likelihood that the person will harm himself or others. Support programs are designed to help restore the person to their pre-crisis level of functioning while preventing inappropriate or premature placement in a more restrictive setting. Crisis support programs are provided on a continuous basis up to 72 hours.

3.3 Crisis Respite

Services which provide temporary, on-site supervision to individuals due to emergency situations and absences of customary caretakers. Services may be provided in the consumer's home or in the respite provider home or facility.

3.4 Acute Psychiatric Inpatient Services

Provision of services in an acute psychiatric setting where the individual is provided room, board and routine monitoring by nursing staff. All appropriate evaluations, treatments and therapies provided to an individual are required service components of this service.

3.5 Crisis Stabilization

Providing acute crisis stabilization in a community setting outside the confine of an acute hospital.

4. Psychosocial Rehabilitation Services

Services which are medically necessary and can reasonably be expected to reduce the disability resulting from mental illness and to restore the individual to his/her best possible functional level in the community. The services are provided outside of a mental institution (or distinct part psychiatric unit) on an as needed basis to assist clients in coping with the symptoms of their illnesses, minimizing the disabling effects of mental illness on their capacity for independent living, and preventing or limiting periods of inpatient treatment. The service components are:

4.1 Mental Health Rehabilitation Assessment

The mental health rehabilitation assessment is an assessment of the person's/family's strengths and needs with regard to functional skills and environmental resources. The purpose of the assessment is to identify and prioritize consumer/family defined rehabilitation goals. The assessment team is composed of the clinical manager, the licensed physician, the

consumer and all other professionals and paraprofessionals providing services to the consumer.

4.2 Clinical Management

The clinical manager provides ongoing clinical direction, oversight, and coordination of services for all MHR consumers in a caseload. The clinical manager is a licensed mental health professional who is an employee of the MHR agency.

4.3 Individual Intervention, Supportive Counseling, Group Counseling, and Parent/Family Intervention

4.3.a Individual Intervention and Supportive Counseling

Individual intervention (adult) and Supportive Counseling (children) are services provided to eliminate psychosocial barriers that impede the development or modification of skills necessary to function in the community, specifically, counseling and therapy services: (A) Maximize strengths, (B) Reduce behavioral problems, and/or functional deficits to change behavior, (C) Promote problem solution, (D) Improve interpersonal skills, and (E) Assist in the development of interest areas and natural supports, (F) Provide illness education, (G) Explore and clarify values, (H) Facilitate interpersonal growth and change and (I) Increase psychological understanding.

4.3.b Parent/Family Intervention

Parent/family intervention is a therapeutic intervention involving the consumer and/or one or more of that consumer's family members. (A) Family members may be the natural parent, foster parent, legal guardian, child, brother, sister, spouse, significant other, grandparent, grandchild, stepparent, aunt, uncle, or first cousin of the consumer. (B) This intervention may include the teaching of parenting skills.

4.3.c Group Counseling

Group counseling is a therapeutic intervention involving direct personal involvement of a counselor/therapist with a limited number of consumers. (A) Sessions are scheduled often enough to provide effective treatment consistent with the Service Agreements of group members. (B) The group focus is face-to-face dialogue of a verbal rather than performance nature. (C) The time period for a group counseling/therapy session generally does not exceed one to 1½ hours. (D) Group counseling is time limited.

4.4 Medication Management Component

Medication Management is directed toward maximizing the consumer's functioning and reducing symptoms. Medication Management is provided only for the purpose of enabling a consumer to make productive use of other Mental Health Rehabilitation services: The Medication Management component provides all of the following services: (A) On-site medication monitoring, (B) Off-site medication monitoring, (C) On-site individual skills training and (D) Off-site individual skills training.

4.5 Psychosocial Skills Training

The Psychosocial Skill Training components provide all the following services: (A) on-site group skills training, (B) Off-site group skills training, (C) On-site individual skills training and (D) Off-site individual skills training. Psychosocial Skills Training teaches skills necessary for the consumer to succeed in his/her environment including but not limited to: (A) Daily and community living skills, (B) Socialization skills, (C) Adaptation Skills, (D) Development of interests and skills in using leisure time, (E) Symptom management skills, (F) Education in mental health/mental illness issues related to the consumer's individual diagnosis and needs and Psychologically supportive individual and/or group activities.

4.6 Service Integration

Service integration includes but is not limited to the following: (A) Integration of therapeutic principles and psychosocial skills into the consumer's natural environment and daily routine, (B) implementation of a person's behavior management plan, (C) Specialized one on one assistance within a group setting, (D) Physical management of a person who is engaged in violent or destructive or disruptive behavior and (E) Other highly individualized services as identified on the consumer's MHR Service Agreement.

5. Supported Living Option

Those services which assist a person to live in permanent, "regular" housing through the specialized support that is available in the intensity and quality needed, but is not present when there is no need. Supported housing refers to assisting people with mental illness to live in permanent, individual housing in a genuine community environment which is not inherently a treatment or service setting, by providing as needed a flexible range of formal and informal supports that are necessary for an individual to maintain that housing.

6. Natural Family Support Networks

Family Support services assure that families of children with serious emotional disturbance have the necessary personal support, information, and

requirements. The CAHSD shall provide informational copies of such policies and procedures to DHH as requested.

D. The CAHSD shall abide by all court rulings and orders that affect DHH and impact entities under the CAHSD's control, and shall make reports to DHH Bureau of Protective Services all applicable cases of alleged abuse, neglect, exploitation, or extortion of individuals in need of protection in a format prescribed by DHH.

E. This Memorandum of Understanding anticipates that East and West Feliciana Parishes shall become part of the CAHSD in which said T.O. and monies shall remain part of the resources transferred. In the event that East and West Feliciana Parishes do not become part of the CAHSD, the DHH and CAHSD shall negotiate a reduction of resources ascribed to those parishes.

F. The CAHSD and DHH agree that in matters of State Civil Service, Risk Management, employee appeals and other such State Civil Service related issues, DHH, through its Bureau of Legal Services, shall continue to function as the Legal Counsel of Record for CAHSD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

§2719. Renewal/Termination

This agreement will cover the period of time from July 1, 1996 to June 30, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:

Attachment A

The DHH agrees to transfer the following T.O. and revenues

Agency	T.O.	S.G.F.	Federal Funds	Self Generated	IAT	Stat. Ded.	Total
PH	1	5,668			38,157 ⁽¹⁾		43,825
OMH	74				7,550,446 ⁽²⁾		
OCDD	17	3,554,158			117,620 ⁽³⁾		3,671,778
OADA	61				4,225,037 ⁽⁴⁾		4,225,037
OM&F	6	378,296					378,296

Source of Revenue

	Total IAT	S.G.F.	Title XIX	Title XVIII	Block Grant	MCH Grant	Preventive Grant	Categorical Grant	Local	Self Generated	PATH Grant	Other
(1)	38,157		3,974			5,139	1,285	25,696				2,063
(2)	7,550,446	6,230,342	634,096	159,135	421,311						80,414	25,148
(3)	117,620		37,620									80,000
(4)	4,225,037	762,311	83,391		3,369,243							10,092

Attachment B

Definitions/Descriptors of Services Provided by DHH Program Offices

Community Based Residential Services: Typically 30 days or less of non-acute care which provides a planned and professionally implemented treatment regiment for persons suffering from alcohol and/or other drugs of abuse. It operates twenty-four hours a day, seven days a week.

Eligible Consumer: Any person residing in the CAHSD area who is not excluded from participation in a given program by virtue of the funding agency's guidelines for eligibility. In regards to utilization of the state and federal grant funds transferred by this Agreement, highest priority for service receipt shall be given to the target populations specified in the State Plan of each respective DHH Program Office. Additionally, the CAHSD shall be responsible for provision of any program components uniformly mandated by the respective State Plans. This provision regarding use of transferred funds shall not govern priorities for use of other revenue which may be generated by the CAHSD, unless specifically noted herein.

Intensive Outpatient Treatment/Day Treatment: Services provided to a client that last two or more hours per day for three or more days per week. Note: Day Care is included in this category.

Long-Term Treatment: Provides treatment and rehabilitation services in excess of 30 days of non-acute care which includes a planned and professionally implemented treatment regiment for persons suffering from alcohol and/or other drugs of abuse. It operates twenty-four hours a day, seven days a week.

Mental Health Services

1. Outreach

A. This service consists of finding, identifying and engaging individuals who have mental health service needs. It promotes prevention and assists in early detection and intervention. It also includes activities designed to promote awareness and understanding of the mental health delivery system and its specialized services and strategies. Target populations may include, but are not limited to, community organizations, consumers, other agencies, mental and physical health service providers, and special populations such as the homeless, persons in jail, and the dually diagnosed.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 19:1177 (September 1993), amended by the Office of Family Support, LR 24:

Subchapter G. Work Programs

§1186. Failure to Cooperate with FIND Work

Failure to participate in the FIND Work program, without good cause, will result in the removal of the individual's needs from FITAP benefits for a period of three months. At the end of the three-month sanctioning period, if the individual has not complied with FIND Work participation requirements, the FITAP case shall be closed for a minimum of one month, or, until the individual agrees to comply. A second or subsequent failure to cooperate will result in immediate closure for at least one month or until the individual agrees to comply.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§1187. Work/Win Participation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 224:51, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:464 (July 1983), repealed by the Department of Social Services, Office of Family Support, LR 24:

Chapter 15. General Program Administration

Subchapter B. Recovery

§1503. Recovery of Overpayments

All over issuances must be reported to the Fraud and Recovery Section except:

1. an inadvertent household error claim when the claim is \$250 or less.
2. an administrative error claim when the claim is \$250 or less.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Family Support, LR 24:

Subpart 5. Family Independence Work Program (FIND Work)

Chapter 29. Organization

Subchapter B. Participation

§2909. Failure to Participate

Failure to participate in the FIND Work program, without good cause, will result in the removal of the individual's needs from FITAP benefits for a period of three months. At the end of the three-month sanctioning period, if the individual has not complied with FIND Work participation requirements, the FITAP case shall be closed for a minimum of one month or until the individual agrees to comply. A second or subsequent failure to cooperate will result in immediate closure for at least one month or until the individual agrees to comply.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Office of Family Support, LR 18:870 (August 1992), LR 19:504 (April 1993), LR 23:451 (April 1997), LR 24:

Subpart 7. Refugee Cash Assistance (RCA)

Chapter 37. Application, Eligibility and Furnishing Assistance

Subchapter A. Coverage and Conditions of Eligibility

§3701. Eligibility Determination

Eligibility for Refugee Cash Assistance is generally the same as for the Family Independence Temporary Assistance Program unless otherwise noted. Significant exceptions include the requirements for school attendance, immunizations, and parenting skills, relationship, cooperation with Support Enforcement Services, participation in FIND Work, and the Earned Income Deduction.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400(E), 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§3704. Application Time Limit and Initial Payment

The time within which the worker shall dispose of the application is limited to within 30 days from the date on which the signed application is received in the local office. In order to assure payment is mailed by the thirtieth day, the initial payment shall be issued by the local office on all certifications which pend over 28 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§3705. Coverage and Conditions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.62(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:401 (May 1984), repealed by the Department of Social Services, Office of Family Support, LR 24:

§3707. Resources

All resources are countable for an RCA household according to LAC 67:III.1115 with the following additional exceptions:

1. \$1,000 per assistance unit;
2. equity value up to \$1,500 in one power driven land conveyance;
3. an RCA household is not allowed an Individual Development Account.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§3708. Income

Income is counted for an RCA household according to LAC 67:III.1150 except that lump sum payments are countable.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§3709. Ineligibility Based on Lump Sum Income

The period of ineligibility based on lump sum income may be recalculated when one or more of the following applies:

1. as a result of yearly increases in the Need Standard, action to adjust the period of ineligibility as a result of Need

Standard increases is required only if the former recipient reapplies for assistance during the period of ineligibility;

2. life threatening circumstances arise prior to its expiration which require the assistance unit to expend all or part of the lump sum income in meeting the expenses related to such circumstances;

3. the lump sum or a portion of the lump sum becomes unavailable as a result of circumstances beyond the client's control, such as verified loss or theft, or the person who received the lump sum leaves the home and makes the money unavailable to the remaining assistance unit.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§3710. Earned Income Deductions

Each individual in the assistance unit who has earned income is entitled to a standard deduction of \$90.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 400.61 and 233.20(a)(11).

HISTORICAL NOTE: Promulgated 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 December 29, 1997 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana 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), FIND Work Program and Refugee Cash
Assistance—Eligibility Conditions**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule results in the following estimated costs: \$2,705,124 in FY 97/98, \$8,327,104 in FY 98/99, and \$9,358,962 in FY 99/00. Form and policy revisions will be required, but the program is unable to determine at this time how many will require revision. The effect on printing costs will be within normal budget constraints. There are no anticipated costs or savings to 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)**

Some applicants who would have otherwise been denied will be entitled to receipt of benefits due to income and resource changes. Recipients will be entitled to additional benefits resulting from certification effective the date of application. Recipients failing to meet FIND Work requirements will lose all benefits after three months. Unemployed parents will no longer have to meet the 100 rule and work history requirements in order to qualify for assistance.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

There is no anticipated effect on competition and employment.

Vera W. Blakes
Assistant Secretary
9711#065

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Food Stamps—Alien Eligibility
(LAC 67:III.1994 and 1995)**

The Department of Social Services, Office of Family Support proposes to amend LAC 67:III.1994 and 1995 pertaining to Food Stamps.

Pursuant to provisions of Public Law 104-208, the United States' Omnibus Consolidated Appropriations Act of 1996, and Public Law 105-33, the Balanced Budget Act of 1997, a change in Food Stamp policy concerning the eligibility of certain aliens is required. This proposed rule is necessary to effect these mandated regulations.

The full text of this proposed rule may be viewed on page 1269 of the emergency rule section of the October 1997 issue of the *Louisiana Register*.

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 December 29, 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: Food Stamps—Alien Eligibility**

- 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. An emergency rule to effect these changes October 1, 1997 will prevent the assessment of any federal penalties to the state.
- 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)
This action will affect a small number of applicants who may not have been eligible for food stamp benefits under current policy governing alien eligibility. The agency is unable to give an estimate as there is no way to determine the number of persons who would be involved.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9711#064

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of the Secretary
and
Office of Family Support**

Child Care Assistance Program (LAC 67:I.101-107)
(LAC 67:III.1181, 2913 and 5101-5109)

The Department of Social Services, Offices of the Secretary and Family Support hereby proposes to repeal LAC 67:I.101-107, and LAC 67:III.1181; to amend LAC 67:III.2913; and to adopt LAC III.5101-5109, the Child Care Assistance Program.

Public Law 104-193, as part of the Child Care Block Grant, empowered the state to consolidate all the various child care programs administered by the Department of Social Services into a single child care program. The program will be administered entirely through the Office of Family Support. This proposed rule consolidates the current Child Care Assistance Program administered through the Office of the Secretary with other existing child care regulations in the Family Independence Temporary Assistance Program, Transitional Child Care, and the Family Independence Work Program. Therefore, this consolidation requires repeal and revision of all LAC 67, Parts I and III sections containing regulations which will now be promulgated in LAC 67:III, Subpart 12.

The full text of this proposed rule may be viewed on pages 1269-1273 in the emergency rule section of the October 1997 issue of the *Louisiana Register*.

Interested persons may submit written comments within 30 days of this publication 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 December 29, 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: Child Care Assistance Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Since the rule proposes to consolidate child care services into a single program administered by the Office of Family Support, there are no costs or savings to the state. Funds and personnel will also be "consolidated," or transferred to the Office of Family Support. The administrative nature of the rule will require the printing of policy changes, in addition to the costs of publishing the proposed rule, but this FY 97/98 implementation cost is negligible. An emergency rule to effect the consolidation as of October 1, 1997 will prevent federal penalties (costs) from being assessed to the state.
There are no costs or savings to local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This rule will have no effect on state revenue collections. The Child Care Assistance Program is allocated state funds and a federal Child Care and Development Block Grant: consolidation has no effect on funds or revenues. There is no effect on local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Included in the proposed action is the routine biannual adjustment in the standard rate schedule and sliding fee scale required by federal law: the program will pay a slightly higher amount for child care and each program offering services would previously have made the adjustment. This change may result in an increase in the number of low-income families eligible for benefits from the Child Care Assistance Program, as well as an increase in the amount paid to child care providers for their services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
By providing a large and steady source of funding for child care services, the Child Care Assistance Program has had the effect of increasing employment and competition in the child

care industry. This effect is expected to continue as long as the federal funding is available.

Vera W. Blakes
Assistant Secretary
9711#062

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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 advertises its intent to amend a rule for black bass.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the notice of intent and final rule, and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sport and Commercial Fishing §149. Black Bass Regulations—Daily Take and Size Limits

A. The Wildlife and Fisheries Commission establishes a statewide daily take (creel limit) of 10 fish for black bass (*Micropterus spp.*). The possession limit shall be the same as the daily take on water and twice the daily take off water.

B. In addition, the commission establishes special size and daily take regulations for black bass on the following water bodies:

1. Concordia Lake (Concordia Parish) and Caney Creek Reservoir (Jackson Parish):

a. Size limit: 15 inch - 19 inch slot. A 15 - 19 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 15 inches and 19 inches, both measurements inclusive.

b. Daily take: eight fish of which no more than two fish may exceed 19 inches maximum total length.*

c. Possession limit:

i. On water—Same as daily take.

ii. Off water—Twice the daily take.

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.

3. False River (Pointe Coupee Parish)

a. Size limit: 14 inch minimum size limit.

b. Daily Take: five fish.

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), LR 24:

Interested persons may comment on the proposed rule in writing to Bennie Fontenot, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 until 4:30 p.m., January 7, 1998.

Daniel J. Babin
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Black Bass—Daily Take and Size Limits

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have 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)

The proposed rule to establish a 14 inch minimum size limit should have no cost and/or economic impacts that directly affect persons or nongovernmental groups. No cost increases, workload adjustment or additional paperwork is anticipated to occur as a result of the proposed action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should result in little or no effect on competition and employment in the public or private sectors.

Ronald G. Couvillion
Undersecretary
9711#036

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Reef Fish Daily Take and Size
Limits (LAC 76:VII.335)

The Wildlife and Fisheries Commission does hereby give notice of intent to amend a rule (LAC 76:VII.335) modifying recreational creel and size limits for reef fish, and rules for commercial harvest of reef fish, which are part of the existing rule for daily take, possession, and size limits for reef fishes set by the commission. Authority for adoption of this rule is included in R.S. 56:6(25)(a), 56:326.1 and 56:326.3.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule, and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§335. Daily Take, Possession and Size Limits Set by

Commission, Reef Fish

A. The Louisiana Wildlife and Fisheries Commission does hereby adopt the following rules and regulations regarding the harvest of triggerfishes, amberjacks, grunts, wrasses, snappers, groupers, sea basses, tilefishes, and porgies within and without Louisiana's territorial waters:

SPECIES	RECREATIONAL BAG LIMITS

4. Greater amberjack	1 fish per person per day

B.1. All persons who do not possess a permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit.

2. Persons who are limited to a recreational bag limit shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any reef fish.

D.1. For charter vessels and headboats as defined in 50 CFR Part 622.2 there will be an allowance for up to two daily bag limits on multi-day trips provided the vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

2. Any fish taken from charter vessels or headboats as defined in 50 CFR Part 622.2 or any charter vessel as described in R.S. 56:302.9 shall not be sold, traded, bartered or exchanged or attempted to be sold, traded, bartered or exchanged. The provisions of §335 apply to fish taken within or without Louisiana's territorial waters.

3. No person aboard any commercial vessel shall transfer or cause the transfer of fish between vessels on state or federal waters.

G. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which a commercial permit or endorsement was issued.

H.	Species	Minimum Size Limits
1.	Red Snapper	16 inches total length
2.	Gray, mutton and yellowtail snapper	12 inches total length
3.	Lane snapper	8 inches total length
4.	Red, gag, black, yellowfin and Nassau grouper	20 inches total length
5.	Jewfish	50 inches total length
6.	Greater amberjack	28 inches fork length (recreational) 36 inches fork length (commercial)
7.	Black seabass	8 inches total length
8.	Vermillion snapper	10 inches total length

I. Federal regulations 50 CFR Part 641, as amended by FR Volume 55, Number 14, define charter vessels and headboats as follows:

Charter Vessel—a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passengers fish for a fee: A charter vessel with a permit to fish on a commercial quota for reef fish is under charter when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

Headboat—vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee. A headboat with a permit to fish on a commercial quota for reef fish is operating as a headboat when it carries a passenger who fishes for a fee, or when there are more than three persons aboard including operator and crew.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:326.1 and 326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:

Interested persons may submit comments relative to the proposed rule to Harry Blanchet, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to January 1, 1998.

Daniel J. Babin
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Reef Fish Daily Take and Size Limits**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no state or local governmental implementation costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenues to any state or local governmental units from the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule is intended to provide consistent regulations for recreational fishers harvesting reef fishes in state waters and in adjacent federal waters. This proposed rule provides for changes in the existing size limits for red snapper, presently 15 inches Total Length (TL) to 16 inches TL; for vermilion snapper, presently 8 inches TL to 10 inches TL; and in the creel limit for greater amberjack, presently three fish per angler to one fish per angler. These changes will reduce the number of red and vermilion snapper harvested commercially,

and red and vermilion snapper and greater amberjack harvested by recreational anglers by some amount and thus could affect some offshore saltwater recreational and commercial trips taken from Louisiana ports.

The restrictions on the amount and size of fish that can be harvested reduces benefits and increases trip costs to recreational and commercial harvesters. Reduction of harvest of any or all of these fish may reduce benefits per trip for anglers and commercial harvesters. Some harvesters may redirect their fishing efforts to other species, geographic areas, fish for longer periods, or participate in nonfishing activities. Long-term benefits may also accrue to harvesters in both recreational and commercial sectors as a result of possible increases in the stocks protected by the proposed limits. No additional costs, permits, fees, workload or paperwork will occur from the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be little or no effect on employment in the public or private sector.

Ronald G. Couvillion
Undersecretary
9711#037

Richard W. England
Assistant to the
Legislative Fiscal Officer

Committee Reports

COMMITTEE REPORT

House of Representatives Committee on Administration of Criminal Justice October 14, 1997

Gaming Control Board—Hearings and Appeals (LAC 42:III.108 and 114)

(Editor's Note: The full text of this emergency rule was published in the emergency rule section, page 1101, of the September 1997 *Louisiana Register*.)

In accordance with R.S. 49:953(B)(4)(a), an oversight subcommittee for the Administration of Criminal Justice Committee met on October 9, 1997 in House Committee Room 6 at 9:30 a.m.

The purpose of the meeting was to conduct legislative oversight on emergency rules proposed and adopted by the Gaming Control Board on August 11, 1997.

The following members of the House of Representatives were present:

Representative Stephen J. Windhorst, Chairman
Representative Audrey A. McCain, Vice Chairman
Representative Shirley Bowler
Representative Beverly G. Bruce
Representative Donald Ray Kennard
Representative Robert Marionneaux
Representative Arthur Morrell
Representative Anthony Perkins
Representative Errol Romero
Representative Matthew "Pete" Schneider

Pursuant to R.S. 49:953(B)(1), the Gaming Control Board submitted its reasons for the adoption of emergency rules (LAC 42:III.108 and 114) pertaining to board hearings and appeals to the Louisiana Gaming Control Board.

These rules were found unacceptable by unanimous vote of the committee.

In accordance with R.S. 49:953(B)(4)(a) and 968(F)(b), the following determinations were made and are submitted for your review regarding the unacceptable proposed rule changes:

1. R.S. 49:953(B)(1) provides that an agency may enact emergency rules only if there is "imminent peril to the public health, safety, or welfare" which requires immediate action which cannot wait for the ordinary promulgation and notice provisions. The reasons offered by the agency for emergency promulgation were found unacceptable by the committee, and the committee determined that no such emergency existed.
2. R.S. 49:953(B)(4) mandates that at the legislative oversight committee hearing the oversight committee must make a determination of whether

the rule meets the above criteria to be considered an emergency rule. The committee found no emergency situation existed.

3. Upon motion of Representative Bowler, the committee found the rules unacceptable because the rules were not in conformity with the intent and scope of the House Bill 1071 which became Act 1076 of the 1997 Regular Legislative Session which was purported to authorize adoption of the rules.

Accordingly, the committee unanimously rejected the proposed "emergency" rules.

Stephen J. Windhorst
Chairman

9711#009

COMMITTEE REPORT

House of Representatives Committee on Insurance October 31, 1997

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

(Editor's Note: The full text of this emergency rule was published in the emergency rule section, pages 1259-1262, of the October 1997 *Louisiana Register*.)

Pursuant to the provisions of R.S. 49:953 et seq., the Committee on Insurance of the House of Representatives convened on October 30, 1997, to review the emergency regulation relative to genetic testing information submitted by the Department of Insurance, which became effective on October 3, 1997.

There was testimony and discussion of the entire regulation. The committee found that a number of provisions needed modification and, after a motion to adopt the suggested changes to the emergency regulation, voted unanimously to adopt the changes and submit the report to the governor with the following recommendations:

1. **Section 3. Definitions.** This provision of the regulation provided for the definition of *family*. The committee recommends that the definition should read as follows:

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, except *genetic information* as defined in R.S. 22:217.3(A).

2. **Section 3. Definitions.** This provision provides for the definition of *person*. The committee recommends that the definition should read as follows:

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. This shall not prevent 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.

3. **Section 8. General Provisions, C.** This section provides for the standard of negligence for certain entities. The committee recommends that Subsection C should read as follows:

C. 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.

The representatives of the Department of Insurance concurred in these substantive changes following review by the governor.

James J. Donelon
Chairman

9711#011

Potpourri

POTPOURRI

**Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Horticulture Commission**

Retail Floristry Examination

The next retail floristry examination will be given January 26-30, 1998 at 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is December 12, 1997. No applications will be accepted after December 12, 1997.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, telephone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify the office prior to December 12, 1997. Refer questions to (504) 925-7772.

Bob Odom
Commissioner

9711#075

POTPOURRI

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

Revision to St. James Parish Redesignation Plan

Under the authority of the Environmental Quality Act, R.S. 30:1051 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that a revision in the State Implementation Plan (SIP) for ozone abatement procedures has been initiated to correct the point source emissions for 1990 and, subsequently, to correct totals for the overall emissions budget found in the redesignation SIP which was approved by the U.S. Environmental Protection Agency on November 13, 1995. The Department of Environmental Quality is also revising the contingency plan to make it identical to contingency plans approved for the parishes of Pointe Coupee and Calcasieu.

A public hearing will be held at 7 p.m., Monday, December 22, 1997, in the Council Chambers, 5800 LA Highway 44, Convent, LA, to receive comments on these proposed changes. Interested persons are invited to attend and submit written or present oral comments on the proposal.

Other written comments concerning the SIP change should

be submitted no later than Wednesday, December 31, 1997, at 4:30 p.m. to Annette Sharp, LDEQ Air Quality Regulatory Division, Box 82135, Baton Rouge, LA 70884-2135. She may be contacted at (504) 765-0914.

A copy of the SIP changes may be viewed from 8 a.m. to 4 p.m., Monday through Friday, at the Air Quality Regulatory Division, 7290 Bluebonnet Boulevard, Second Floor, Baton Rouge, LA or the Capital Regional Office, 5222 Summa Court, Baton Rouge, LA.

Gus Von Bodungen, P.E.
Assistant Secretary

9711#069

POTPOURRI

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

Consolidated Fugitive Emission Control Program

On April 17, 1996, a Memorandum of Understanding between EPA Region 6 and LDEQ was signed to implement a consolidated fugitive emission control program for industrial facilities in Louisiana. The program consolidates overlapping state and federal equipment leak control programs based on an "overall most stringent program" approach.

This notice serves to provide the names of those facilities that have submitted a Source Notice and Agreement during the period of July 2, 1997 through October 10, 1997 to consolidate fugitive emission programs for specified units:

Air Products - Iberville Parish
Chevron Chemical - Saint James Parish
DSM Copolymer, Inc. - East Baton Rouge Parish
Fina Oil and Chemical Company - Ascension Parish

Contact Jim Courville at (504) 765-0219 for additional information.

Gus Von Bodungen, P.E.
Assistant Secretary

9711#068

POTPOURRI

**Department of Environmental Quality
Office of Water Resources**

Penalty Policy Draft Proposal—Request for Comments

The Department of Environmental Quality is requesting comments on the technical aspects of a penalty policy for the Office of Water Resources. This draft proposal was developed

by the department in partial response to the state's assumption of the federal National Pollutant Discharge Elimination System (NPDES) program and R.S. 2050.1(A). The department solicited input from several citizen organizations and industry trade groups and held several meetings at its office to obtain meaningful input from these groups.

This is a preliminary step in the rulemaking process. It is the department's intent to incorporate this penalty policy into existing regulations. Official rulemaking will be initiated after review and consideration of the comments received on this advance notice.

All interested persons are invited to submit written comments on the draft proposal. Such comments must be received no later than January 20, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or by FAX (504) 765-0486. Copies of this draft proposal can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of the draft proposal.

This draft proposal is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-First Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Any questions regarding the content or status of the penalty policy for the Office of Water Resources should be directed to Cheryl Easley, Office of Water Resources, (504) 765-0574, or R. Bruce Hammatt, Office of Water Resources, (504) 765-0493.

Linda Korn Levy
Assistant Secretary

9711#070

POTPOURRI

**Office of the Governor
Division of Administration
Office of Community Development**

Fiscal Year 1998 Consolidated Annual Action Plan

As set forth in 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) requires state agencies which administer certain HUD programs to incorporate their planning and application requirements into one master plan called the Consolidated Plan. In Louisiana, the four state agencies participating in this consolidated planning process and the HUD-funded program administered by each agency include the Division of Administration/Office of Community Development (Small Cities Community

Development Block Grant Program); the Louisiana Housing Finance Agency (HOME Investments Partnership Program); the Department of Social Services/Office of Community Services (Emergency Shelter Grants Program); and the Department of Health and Hospitals/HIV/AIDS Program (Housing Opportunities for Persons with AIDS Program).

A consolidated plan was prepared which outlined the state's overall housing and community development needs and a strategy for meeting those needs for federal fiscal years 1995-1999 and included a one-year action plan for FY 1995 federal funds received for the four aforementioned HUD programs. An annual update or action plan for the distribution of funds must be prepared and publicized for each of the subsequent four program years.

A proposed FY 1998 Consolidated Annual Action Plan which identifies the proposed method of distribution of FY 1998 funds under the four HUD programs has been prepared and will be available for review beginning November 24, 1997, at the Office of Community Development, State Capitol Annex, 1051 North Third Street, Room 168, Baton Rouge, LA. Copies of the proposed annual action plan will also be available for review at the Louisiana Housing Finance Agency at 200 Lafayette Street, Suite 300, in Baton Rouge, the Department of Social Services/Office of Community Services at 333 Laurel Street, Room 802, in Baton Rouge, and the Department of Health and Hospitals/HIV/AIDS Program at 1600 Canal Street, Ninth Floor, in New Orleans.

The following presents a summary of the FY 1998 Consolidated Annual Action Plan.

The state's anticipated federal allocation for the FY 1998 Louisiana Community Development Block Grant (LCDBG) Program is approximately \$37 million (subject to federal allocation). The Office of Community Development is proposing to establish the following five program areas for the distribution of these funds:

- (1) Housing—\$2 million will be set aside to provide safe and sanitary living conditions through housing rehabilitation or replacement housing for low/moderate income persons;
- (2) Public Facilities—approximately \$24 million will be allocated to improve existing or to construct new water and sewer systems and streets or to build a multipurpose community center;
- (3) Economic Development—approximately \$6 million will be allocated to provide loans to local governing bodies which will assist a for-profit business;
- (4) Demonstrated Needs—\$2.7 million will be set aside to alleviate critical/urgent needs involving improvements to existing water, sewer, and gas systems;
- (5) LaStep—\$600,000 will be set aside to fund one or more water and/or sewer projects which may utilize LCDBG funds for materials, engineering, and administrative costs in conjunction with local resources (human, material, and/or financial).

The Louisiana Housing Finance Agency, as the administrator of the state's HOME Program, expects to receive an allocation of \$12,756,000 in FY 1998 funds. These funds are intended for use in support of the following affordable housing categories:

(1) \$1.9 million (or 15 percent of the HOME project allocation) will be set aside for the exclusive use of state designated community housing development organizations in developing home ownership and rental projects;

(2) Approximately \$4.3 million will be reserved to provide second mortgages, down payment and closing cost assistance for first time home buyers. These funds are to be used in combination with state mortgage revenue bonds which provide below market rates for first mortgage financing;

(3) Approximately \$4.3 million will be available for primary or secondary financing to for-profit and nonprofit developers of multi-family rental housing in nonHOME entitled areas. The balance of the grant is to be used by the agency in support of the administration of the various HOME supported programs.

The state's estimated federal allocation for the FY 1998 Emergency Shelter Grants Program (ESGP) is \$1,252,000. ESGP funding is dedicated for the rehabilitation, renovation, or conversion of buildings for use as emergency shelters for the homeless, for payment of certain operating costs and social services expenses in connection with emergency shelter for the homeless and for homeless prevention services. The Louisiana Department of Social Services, administrative agency for the Emergency Shelter Grants Program, proposes to distribute the state's funding allocation to eligible units of general local government which may make all or part of the grant amounts available to private nonprofit organizations for use on eligible activities. Eligible applicants are defined as governmental bodies for all parish jurisdictions and those city jurisdictions with a minimum population of 10,000. The Department of Social Services shall continue use of a geographic allocation formula (based on factors for low income population) to ensure that each region of the state is allotted a specified minimum of Emergency Shelter Grant assistance. Within each region, grant distribution will be conducted through a competitive grant award process. Among other evaluation criteria, this selection process will consider the extent to which proposed activities will address local needs to "complete the development of a comprehensive system of services which will provide a continuum of care to assist homeless persons to achieve independent living."

The Louisiana Department of Health and Hospitals, Office of Public Health, HIV/AIDS Program proposes to allocate the estimated FY 1998 Housing Opportunities for Persons with AIDS (HOPWA) grant funds through a 60/40 percent funding split. Seven HIV/AIDS residential facilities in eight different regions of the state will be allocated approximately 60 percent of the funds. These funds will be allocated through a competitive statewide HIV/AIDS Residential Facilities Solicitation of Application process. These HOPWA funds are for new construction, renovation, rehabilitation, acquisition, conversion, lease and repair of facilities or purchase of capital equipment. The remaining 40 percent will be allocated through a Request for Proposal through the Ryan White Title II Regional Consortia (this includes the entire state, excluding Region I—the New Orleans EMSA). This allocation will be used to fund emergency short-term rent, mortgage, and utility assistance payments for low income persons living with HIV/AIDS.

Written comments on the proposed plan may be submitted beginning November 24, 1997, and will be accepted until December 31, 1997, at the Office of Community Development, Box 94095, Baton Rouge, LA 70804-9095.

Mark C. Drennen
Commissioner

9711#066

POTPOURRI

Department of Health and Hospitals Board of Veterinary Medicine

1998 Meeting Dates

The Board of Veterinary Medicine will meet on the following dates in 1998:

Thursday, January 22, 1998
Thursday, April 23, 1998
Wednesday, June 17, 1998
Wednesday, August 19, 1998
Wednesday, October 14, 1998
Wednesday, December 2, 1998

Charles B. Mann
Executive Director

9711#002

POTPOURRI

Department of Health and Hospitals Board of Veterinary Medicine

1998 Spring/Summer Examination Dates

The Board of Veterinary Medicine will administer the national and state examinations for licensure to practice veterinary medicine as follows:

Examination	Date	Deadline to Apply
National Board	Tuesday, April 12, 1998	Friday, February 27, 1998
Clinical Competency Test	Wednesday, April 13, 1998	Friday, February 27, 1998
State Board	First Tuesday of Every Month	Four weeks prior to desired exam date

Applications for all examinations must be received on or before the deadline. Applications and information may be obtained from the board office, 263 Third Street, Suite 104, Baton Rouge, LA 70801 or by calling (504) 342-2176.

Charles B. Mann
Executive Director

9711#006

POTPOURRI

**Department of Insurance
Office of the Commissioner**

Annual Assessment Percentage

In accordance with the provisions of R.S. 22:250.10(D)(2), the Department of Insurance is hereby providing notice of the annual assessment percentage amount for the 1997 calendar year. Based on the cost of administering and enforcing the provisions of R.S. 22:250 et seq., the department has established the assessment percentage amount for 1997 at .02 of 1 percent of the amount of premiums received in this state by insurers subject to the provisions of R.S. 22:250 et seq.

The annual assessment shall be included on the annual notice of premium taxes that become due and payable on March 1, 1998.

James H. "Jim" Brown
Commissioner

9711#038

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	Well Name	Well No.	Serial No.
George Barron	Mill Creek	Louisiana-Pacific	001	142471
George Barron	South French Fork	VUA; Thompson	003	142908
George Barron	South French Fork	VUC; Thompson	004	159310
George Barron	West Long Slough	Exxon-Tensas Delta S	001	214553
George Barron	Olla	LA Pac	001	171458
George Barron	Olla	LA Pac	002	172467
W T Burton	Wildcat	W T Burton Fee	001	030463
Co-Wil-Co, Incorporated	Big Island	Crooks-Shumake B	001	185081
Co-Wil-Co, Incorporated	Big Island	Crooks-Shumake A	001	182161

Essex Corporation of Louisiana	Converse	Olin C	004	203629
Essex Corporation of Louisiana	Converse	Olin C	006	203631
Essex Corporation of Louisiana	Converse	Olin C	007	203632
Essex Corporation of Louisiana	Converse	Olin C	008	203633
Essex Corporation of Louisiana	Converse	Olin C	010	203635
Essex Corporation of Louisiana	Converse	Olin C	011	203636
Essex Corporation of Louisiana	Converse	Olin C	012	203637
Essex Corporation of Louisiana	Converse	Olin C	013	203638
Essex Corporation of Louisiana	Converse	Olin C	014	203639
Essex Corporation of Louisiana	Converse	Olin C	016	203745
Essex Corporation of Louisiana	Converse	G I Paul	002	099428
Essex Corporation of Louisiana	Converse	Olin E	001	180822
Ricks and Ricks Oil Producers	Horseshoe	MIL SUA; King A	002	118415
Sabine Corporation	Sullivans Lake	Iberville Parish School Board	001	204903
Sunchase Exploration, Inc.	Egan	BATH 1 RA SUA; Regan	001	196645
Sunchase Exploration, Inc.	Shuteston	LN 2 SUE; Miller et al	001	192836
Sunchase Exploration, Inc.	Maurice	Thibodaux RA SUA; Trahan	001	196157
Sunchase Exploration, Inc.	Lawson	L Hoffpauir Loving et al	001	205122
Sunchase Exploration, Inc.	Maurice	J Trahan SWD	001	972288
TandC Trucking Co.	Tullos Urania	W A Capps	001	176453
W. H. Talbot	Charenton	D Alleman	008	023277

Twin City Gas	Monroe	D W Corley	001	145668
Twin City Gas	Monroe	G A Puckett	001	147383
Twin City Gas	Monroe	D L O Puckett	001	149248
Twin City Gas	Monroe	Case	003	178122
Twin City Gas	Monroe	Earl Case	001	178200
Twin City Gas	Monroe	Fife	001	180384
Twin City Gas	Monroe	Hart	001	180930
Twin City Gas	Monroe	Hart	003	180958
Twin City Gas	Monroe	ANNONA RA SUO; Murphy	001	181453
Twin City Gas	Monroe	ANNONA RA SUT; Walker	001	181454
Twin City Gas	Monroe	Snyder	001	182596
Twin City Gas	Monroe	Womack	001	182597
Twin City Gas	Monroe	Masey	003	182995
Twin City Gas	Monroe	Murphy	1D	188705
Twin City Gas	Monroe	Walker	1D	192021

Twin City Gas	Monroe	Case	001	176049
Twin City Gas	Monroe	Prestly	001	180371
White Oil Company	Tullos Urania	Urania Lbr Co Ltd et al	3-A	121668
White Oil Company	Tullos Urania	Urania Lbr Co Ltd et al	005	120915
White Oil Company	Tullos Urania	Urania Lbr Co Ltd et al	006	121098
White Oil Company	Tullos Urania	Urania Lbr Co Ltd et al	012	125986
White Oil Company	Tullos Urania	Urania Lbr Co Ltd et al	14-A	126605
White Oil Company	Tullos Urania	Urania Lbr Co Ltd et al	011	124488
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Warren A. Fleet
Commissioner

9711#067

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