

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Environmental Sciences Office of Agriculture and Environmental Sciences

#### Restriction on Application of Certain Pesticides (LAC 7:XXIII.143)

In accordance with the Administrative Procedure Act, R.S. 49:950.B and R.S. 3:3203.A, the commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in amending the following rules for the implementation of regulations governing the use of the pesticide 2, 4-D and products containing 2, 4-D.

The applications of 2, 4-D in certain parishes, in accordance with the current regulations and labels, have not been sufficient to control drift onto non-target areas. Failure to prevent the drift onto non-target areas will adversely affect other crops particularly cotton. The adverse effects to the cotton crop and other non-target crops will cause irreparable harm to the economy of Central Louisiana and to Louisiana Agricultural producers.

The department has, therefore, determined that these emergency rules implementing further restrictions on the application of 2, 4-D, and products containing 2, 4-D, during the current crop year, are necessary in order to alleviate these perils.

This Rule becomes effective on April 3, 2002 and will remain in effect 120 days.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticide

### Chapter 1. Advisory Commission on Pesticides

#### §143. Restrictions on Application of Certain Pesticides

##### A. - O. ...

P. Regulations Governing Aerial Applications of 2, 4-D or Products Containing 2, 4-D

##### 1. Registration Requirements

a. The commissioner hereby declares that prior to making any commercial aerial or ground application of 2, 4-D or products containing 2, 4-D, as described in LAC 7:XXIII.143.P.3.a.i, the owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing.

b. The commissioner hereby declares that all permits and written authorizations of applications of 2, 4-D or products containing 2, 4-D in the areas listed in LAC 7:XXIII.143.P.3.a.i, shall be a part of the record keeping requirements, and be in the possession of the owner/operator prior to application.

2. Grower Liability. Growers of crops shall not force or coerce applicators to apply 2, 4-D or products containing 2, 4-D to their crops when the applicators, conforming to the Louisiana Pesticide Law and Rules and Regulations or to the

pesticide label, deem it unsafe to make such applications. Growers found to be in violation of this section shall forfeit their right to use 2, 4D or products containing 2, 4D on their crops, subject to appeal to the Advisory Commission on Pesticides.

3. 2, 4D or Products Containing 2, 4-D; Application Restriction

a. Aerial application of 2, 4-D or products containing 2, 4D is limited to only permitted applications annually between April 1 and May 1 in the following parishes:

i. Allen (East of U.S. Highway 165 and North of U.S. Highway 190), Avoyelles (West of LA Highway 1), Evangeline, Pointe Coupee (West of LA Highway 1 and North of U.S. Highway 190), Rapides, & St. Landry (North of U.S. Highway 190).

ii. Applications of 2, 4-D, or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators between May 1 and August 15 in the areas listed in LAC 7:XXIII.143.P.3.a.i., except commercial applications of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between May 1 and August 15 in the area south of La. Highway 104 and La. Highway 26 and north of U.S. Highway 190 between U.S. Highway 165 and La. Highway 13 in the parishes of Allen and Evangeline, and except upon written application to and the specific written authorization by the Assistant Commissioner of the Office of Agricultural and Environmental Sciences, or in his absence the Commissioner of Agriculture and Forestry.

4. Procedures for Permitting Applications of 2, 4-D or Products Containing 2, 4-D

a. Prior to any application of 2, 4D, or products containing 2, 4-D, a permit shall be obtained in writing from the Louisiana Department of Agriculture and Forestry. Such permits may contain limited conditions of applications and shall be good for five days from the date issued. Growers or commercial ground or aerial applicators shall obtain permits from the Director of Pesticides and Environmental Programs (DPEP). Commercial ground and aerial applicators shall fax daily to DPEP all permitted or written authorized applications of 2, 4D or products containing 2, 4D. The faxed information shall include but not be limited to the following:

- i. wind speed and direction at time of application;
- ii. temperature at time of application;
- iii. field location and quantity of acreage;
- iv. time of application;
- v. grower name, address and phone number;
- vi. owner/operator firm name, address and phone number;
- vii. applicator name, address, phone number and certification number;
- viii. product name and EPA registration number;
- ix. any other relevant information.

b. The determination as to whether a permit for application is to be given shall be based on criteria including but not limited to:

- i. weather patterns and predictions;
- ii. wind speed and direction;
- iii. propensity for drift;
- iv. distance to susceptible crops;
- v. quantity of acreage to be treated;
- vi. extent and presence of vegetation in the buffer zone;

vii. any other relevant data.

5. Monitoring of 2, 4-D or Products Containing 2, 4-D  
a. Growers or owner/operators shall apply to the DPEP, on forms prescribed by the commissioner, all requests for aerial applications of 2, 4-D or products containing 2, 4-D.

b. All owner/operators and private applicators shall maintain a record of 2, 4-D or products containing 2, 4-D applications.

6. Determination of Appropriate Action

a. Upon determination by the commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists, he may consider:

- i. stop orders for use, sales, or application;
- ii. label changes;
- iii. remedial or protective orders;
- iv. any other relevant remedies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1671 (October 2001), LR 28:

Bob Odom  
Commissioner

0204#031

## DECLARATION OF EMERGENCY

### Student Financial Assistance Commission Office of Student Financial Assistance

Application Deadlines (LAC 28:IV.503)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend the rules of the Scholarship/Grant programs (R.S. 17:3021-3026, R.S. 3041.10-3041.15, and R.S. 17:3042.1, R.S. 17:3048.1).

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that this Emergency Rule is necessary in order to

prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective March 25, 2002, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

## Title 28

### EDUCATION

#### Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs Chapter 5. Application; Application Deadlines and Proof of Compliance

##### §503. Application Deadlines

A. - A.4. ...

B. Final Deadline for Full Award

1. In order to receive the full benefits of a TOPS award as provided in §701.E and 803.D, the final deadline for receipt of a student's initial FAFSA application is July 1st of the Academic Year (High School) in which a student graduates. For example, for a student graduating in the 2000-2001 Academic Year (High School), the student must submit the initial FAFSA in time for it to be received by the federal processor by July 1, 2001.

2. Notwithstanding the deadline established by §503.B.1 above, applicants who enter on active duty in the U.S. Armed Forces have a final deadline for receipt of their initial FAFSA application of one year from the date of separation from active duty. In order to be eligible under this subsection, the applicant must meet the requirements of §703.A.4.b or d or §803.A.4.b or d of these rules and must not have been discharged with an undesirable, bad conduct or dishonorable discharge.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated LR 24:635 (April 1998), amended LR 24:1900 (October 1998), LR 25:655 (April 1999), LR 25:2396 (December 1999), LR 25:1994 (September 2000), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 28:

George Badge Eldredge  
General Counsel

0204#016

## DECLARATION OF EMERGENCY

### Office of the Governor Ground Water Management Commission

Groundwater Management  
(LAC 33:IX.Chapters 31-35)

Editor's Note: In accordance with OSR uniform formatting procedure, these rules have been moved from Title 70 to Title 33 for topical placement.

Pursuant to the provisions of the Louisiana Administrative Procedure Act, R.S. 49:953.(1), (2), 954.B(2), as amended, on May 18, 2001, the Groundwater Management Commission (Commission) approved the subject Emergency Rules for hearing regarding the designation of Critical Groundwater Areas on August 20, 2001 and revised herein on November 28, 2001, and reissued on March 20, 2002. The Emergency Rules satisfy the requirements mandated by Act 446 of the 2001 Regular Session, which states that the

commission shall develop and promulgate rules and regulations for the determination of critical groundwater areas and possible limitation of access to groundwater sources and response to emergency situations. Failure to designate and protect critical ground areas may endanger drinking water, as well as the ability of industry and agriculture to utilize these fresh water aquifers for commercial purposes. The Act specifically requires that public hearing be held in such matters and the attached Emergency Rules provide the mechanism to meet that requirement.

These Emergency Rules were reissued pending final Rules.

These Rules will be effective March 28, 2002, and remain so for 120 days.

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part IX. Water Quality**

**Subpart 2. Groundwater Management**

**Chapter 31. General Provisions**

**§3101. Applicability**

A. These Rules shall be applicable to hearings relative to the commission's jurisdiction to determine critical groundwater areas, potential critical ground water areas and a ground water emergency. The Rules shall not alter or change the right of the commission to call a hearing for the purpose of taking action with respect to any matter within its jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3103. Definitions**

A. The words defined herein shall have the following meanings when used in these Rules. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

*Beneficial Purpose or Beneficial Use* Cthe technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational or therapeutic purposes or any other advantageous use.

*Commission* CGround Water Management Commission authorized by R.S. 38:3099.3.A.

*Critical Ground Water Area (CGWA)* Can area where sustainability of an aquifer is not being maintained under current or projected usage or under normal environmental conditions which are causing a serious adverse impact to an aquifer.

*Ground Water* Cwater suitable for any beneficial purpose percolating below the earth's surface, including water suitable for domestic use, supply of a public water system or containing fewer than 10,000 mg/l total dissolved solids.

*Ground Water Emergency* Cshall mean an unanticipated occurrence as a result of a natural force or a man-made act which causes either the depletion of a ground water source or a lack of access to a ground water source or the likelihood of excessive pumping from a ground water source.

*Person* Cany natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

*Potential Critical Ground Water Area* Ca ground water area where drilling of new well(s) or pumpage at current rates could result in creation of a CGWA.

*Sustainability* Cthe development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

*User* Cany person making any beneficial use of ground water from a well or wells owned or operated by such person or from a well or wells owned or operated solely for the production of water used by such person.

*Well or Water Well* Cany well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**Chapter 33. Application Procedure**

**§3301. Who May Apply**

A. Any person owning property, a water well or utilizing water from an aquifer within the jurisdiction of the commission shall have the right to file an application with the commission calling for a public hearing relative to said aquifer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3303. Notice of Intent**

A. A Notice of Intent to file an application will be published in the official parish journals. Such notice will include:

1. name, address, and telephone number;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish, section, township, range, and a map which shall be sufficiently clear to readily identify the location of the proposed CGWA;
4. a statement that, if the area is designated a CGWA, ground water use may be restricted;
5. a statement that all comments should be sent to:

Commissioner of Conservation

Post Office Box 94275

Baton Rouge, LA 70804-9275

ATTN: Groundwater Management Commission Staff

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

**§3305. Application**

A. Application for Hearing. The application shall be filed in duplicate no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. The application must include:

1. the name, address, telephone number, and signature of applicant;
2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;
3. identification of the source of ground water (aquifer) to which the application applies;

4. identification of the proposed critical ground water area, including its location (section, township, range and parish) and U.S. Geological Survey topographic map of appropriate scale (1:24,000, 1:62,500, 1:100,000, or LA - DOTD Louisiana parish map outlining the perimeter of the area). Submittal of digital data is recommended. Digital map data in vector and/or raster formats should have supporting metadata;

5. statement of facts and evidence supporting the application, pursuant to §3307, and a statement on how no action would likely impact ground water resources in the area subject to request;

6. the original published page from the official parish journal evidencing publication of Notice of Intent to apply to the Ground Water Management Commission.

B. Application by Commission. The commission may initiate a hearing to consider action with respect to a specific ground water area. The commission shall notify the public pursuant to §3303 and §3501.A prior to issuing an order. The information presented by the commission at the hearing shall include but not be limited to information pursuant to §3305.A and §3307.

C. Ground Water Emergency. Notwithstanding the provisions of Paragraphs A and B hereof, the commission may initiate action in response to an application of an interested party or upon its own motion in response to a ground water emergency. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commission will promptly schedule a public hearing pursuant to §3501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3307. Criteria for a Critical Ground Water**

#### **Designation**

A. Application for designation of a critical ground water area or potential critical ground water area must contain a statement of facts and supporting evidence substantiating that at least one of the following criteria applies to the source of ground water (aquifer) within such proposed area:

1. water levels in the source of ground water show declines that will render such source inadequate for current or immediate future demands without some action being taken; and/or

2. concentrations of chlorides, total dissolved solids (TDS) or other impurities that will render the source of ground water unsuitable for domestic use have shown annual increases that will render such source unsuitable for current or immediate future demands without some action being taken; and/or

3. overall withdrawals annually have exceeded the recharge of the source of ground water that will render the source inadequate for current or immediate future demands without some action being taken.

B. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the designation of the critical ground water area boundaries; and

2. the recommended management controls of the critical ground water area, that may include but not be limited to:

a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;

b. requiring new permits for the drilling of new water wells including but not limited to:

i. spacing restrictions; and/or

ii depth restrictions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3309. Commission Review**

A. Within 30 days of receipt of an application pursuant to §3305.A, the applicant will be notified whether or not the application is complete. If the commission determines an application is incomplete, the applicant shall be notified in writing of the reasons for that determination and the information needed to make such application complete. The commission may reject and return any application determined to be without merit or frivolous.

B. Using all available data presented to the commission, an analysis will be made by the commission to determine if the area under consideration meets the criteria to be designated a critical ground water area or could become a critical ground water area.

AUTHORITY NOTE: Promulgated in accordance with RS. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3311. Recordkeeping**

A. The commission shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commission. The commission shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

## **Chapter 35. Hearing**

### **§3501. Notice of Hearing**

A. Hearing Pursuant to §3305.A or §3305.B. Upon determination that an application is complete the commission shall schedule one initial public hearing at a location determined by the commission in the locality of the area affected by the application. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing. A copy of the notice shall be sent to the applicant, any person requesting notice, and local, state and federal agencies that the commission determines may have an interest in the decision relating to the application.

B. Hearing Pursuant to §3305.C and §3505.B. The commission will notify the public of any hearing initiated by the commission either as a result of an action, pursuant to §3305.C or §3505.B, a minimum of 15 days prior to the hearing. Hearings initiated by the commission will be held in

each parish affected by the commission's action under §3305.C or §3505.B. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection. Such notice shall be published in the official state journal and official parish journal of each parish affected by the commission's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3503. Rules of Conduct**

A. Hearings scheduled pursuant to those rules will be fact finding in nature and witnesses shall not be subject to cross-examination. The chairman of the commission, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements. The applicant shall first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives. All hearings shall be recorded verbatim. Copies of the transcript shall be available for public inspection at the Office of Conservation. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

### **§3505. Decision**

A Commission Decisions. After hearings held pursuant to §3501.A or §3305.C, the commission shall issue a written decision in the form of an order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and/or
2. the recommended management controls of the critical ground water area, that may include but not be limited to:
  - a. restrictions on the amount of withdrawals by any and/or all users in accordance with R.S. 38:3099.3.D;
  - b. requiring new permits for the drilling of new water wells including but not limited to:
    - i. spacing restrictions; and/or
    - ii. depth restrictions.

B. The commission will make the order and proposed management controls available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commission in accordance with §3501.B will initiate hearings on the order and proposed management controls in each parish affected by said order and management controls.

C. Final Orders. The commission will adopt final orders and management controls after completion of §3501.B. The final orders shall be made a part of the permanent records of the commission in accordance with §3311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3099 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:

Karen K Gautreaux  
Chairperson

0204#015

## **DECLARATION OF EMERGENCY**

### **Department of Health and Hospitals Office of the Secretary Bureau of Community Supports and Services**

Home and Community Based Services  
Waiver ProgramCChildren's Choice

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following Emergency Rule under the Administrative Procedure Act, R.S. 49:950 et seq. The Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopted a rule implementing a new Home and Community Based Services waiver called Children's Choice which was designed to provide an alternative to the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver (Louisiana Register, Volume 26, Number 12). Children's Choice provides supplemental services, limited to \$7,500 per year per child for waiver services, to children with developmental disabilities who live with their families. Waiver recipients also receive all medical services covered by medicaid, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. Families of children whose names are on the MR/DD Waiver request for services registry (formally known as the MR/DD Waiver waiting list) may choose to either apply for Children's Choice or have the child remain on the MR/DD registry.

The department subsequently adopted provisions for additional supports outside of the \$7,500 limit on waiver service expenditures should certain catastrophic events occur after a child has been found eligible for Children's Choice (Louisiana Register, Volume 27, Number 7). The Bureau now proposes to amend the December 20, 2000 rule to increase the service cap for Children's Choice services to \$15,000 per individual per plan of care year. This action is being taken to provide needed services and to secure additional federal funding. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program by approximately \$891,250 for state fiscal year 2001-2002.

#### **Emergency Rule**

Effective April 21, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends the December 20, 2000 Rule and increases the service cap for Children's Choice services to \$15,000 per individual per plan of care year.

Implementation of this Emergency Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. She is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood  
Secretary

0204#056

**DECLARATION OF EMERGENCY**

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

CommunityCARE ProgramCPhysician  
ServicesCReimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B.1 et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implemented a primary care case management (PCCM) program called CommunityCARE in designated parishes of the state to provide access to health care for eligible medicaid recipients, particularly those residing in rural communities. The CommunityCARE Program provides medicaid recipients in the designated parishes with a primary care physician, osteopath, or family doctor to serve as their primary care provider (*Louisiana Register*, Volume 19, Number 5). Recipients are given the opportunity to select a participating doctor, federally qualified health center (FQHC), or rural health clinic in their parish of residence or in a contiguous parish to be their primary care provider. The May 20, 1993 rule was subsequently amended to remove the prior authorization requirement for emergency medical services when appropriate medical screening determines that an emergency medical condition exists (*Louisiana Register*, Volume 25, Number 4) and to establish criteria for changing primary care physicians (*Louisiana Register*, Volume 27, Number 4).

The Department has determined that it is necessary to expand the CommunityCARE Program into a statewide program. In order to facilitate provider participation, the Bureau proposes to increase the reimbursement rate for certain designated Physicians= Current Procedural Terminology (CPT) procedure codes related to primary care services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the CommunityCARE Program and

recipient access to providers of primary medical services. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$538,389 for state fiscal year 2001-2002.

**Emergency Rule**

Effective for dates of service on or after April 1, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the reimbursement rates for certain designated Physicians= Current Procedural Terminology (CPT) procedure codes related to primary medical services rendered to CommunityCare recipients by providers enrolled in the CommunityCARE Program.

Reimbursement for the following CPT-4 evaluation and management procedure codes is increased to 70 percent of the 2002 Medicare allowable fee schedule. The increase shall apply only to services provided by enrolled CommunityCARE providers to CommunityCARE recipients.

CPT-4 Code	Description
99201	Office, New Patient, Straightforward
99202	Office New Patient, Expanded, Straightforward
99203	Office New Patient, Detailed, Low Complexity
99204	Office New Patient, Comp, Moderate Complexity
99205	Office New Patient, Comp, High Complexity
99211	Office Established Patient, Minimal Problems
99214	Office Est Patient, Detailed, Mod Complexity
99215	Office Est Patient, Comp, High Complexity
99218	Initial Observation Care, Straightforward, Low Complexity
99219	Initial Observation Care, Comprehensive, Moderate Complexity
99220	Initial Observation Care, Comprehensive, High Complexity
99221	Initial Hospital Comprehensive, Straightforward, Low Complexity
99222	Initial Hospital Comprehensive, Moderate Complexity
99223	Initial Hospital Comprehensive, High Complexity
99232	Subsequent Hospital, Expanded, Moderate Complexity
99233	Subsequent Hospital, Detailed, High Complexity
99238	Hospital Discharge Management
99283	Emergency Room Visit, Expanded, Low Complexity
99284	Emergency Room Visit, Detailed, Moderate Complexity
99285	Emergency Room Visit, Comprehensive, High Complexity
99342	Home, New Patient, Expanded, Moderate Complexity
99343	Home , New Patient, Detailed, High Complexity
99344	Home, New Patient
99345	Home, New Patient
99347	Home Visit, Established Patient
99348	Home Visit, Established Patient
99349	Home Visit, Established Patient
99350	Home Visit, Established Patient
99432	Normal Newborn Care Other than Hospital

Reimbursement for the following CPT-4 preventative medicine procedure codes is increased to \$51. The increase shall apply only to services provided by enrolled CommunityCARE providers to CommunityCARE recipients.

CPT-4 Code	Description
99381	Initial Healthy Individual, New Patient, Infant to 1 year
99382	Initial Healthy Individual, New Patient, Early Childhood 1-4 years
99383	Initial Healthy Individual, New Patient, Late Childhood 5-11 years
99384	Initial Healthy Individual, New Patient, Adolescent 12-17 years
99385	Initial Healthy Individual, New Patient, 18-39 years
99391	Periodic Reevaluation and Management Healthy Individual, Infant
99392	Periodic Reevaluation and Management Healthy Individual, Early Childhood 1-4 years
99393	Periodic Reevaluation and Management Healthy Individual, Late Childhood 5-11 years
99394	Periodic Reevaluation and Management Healthy Individual, Adolescent 12-17 years
99395	Periodic Reevaluation and Management Healthy Individual, 18-39 years

Implementation of this emergency rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood  
Secretary

0204#057

## DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment  
Program Psychological and Behavioral Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides coverage for an extensive range of medical services, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services for medicaid recipients up to the age of 21. As a result of a lawsuit, the department was ordered to make available to class members with autism appropriate psychological and behavioral services. Therefore, the bureau furnished reimbursement for these psychological and

behavioral services under the EPSDT program. This action was taken to promote the health and welfare of medicaid eligible children who have a diagnosis of autism or other pervasive developmental disorders by ensuring access to psychological and behavioral services. This Emergency Rule is being adopted to continue the provisions contained in the January 1, 2002 rule.

### Emergency Rule

Effective for dates of service on or after May 2, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses psychological and behavioral services under the Early and Periodic Screening, Diagnosis and Treatment Program for recipients who have a diagnosis of autism or other pervasive developmental disorders and are up to the age of 21.

A. Eligibility Criteria. In order to be eligible for services, a Medicaid recipient must be up to the age of 21 and meet one of the following criteria:

1. have a diagnosis of Pervasive Developmental Disorder (PDD) according to a clinically appropriate diagnostic screening tool or other assessment; or
2. have an impaired functional status that can be addressed by psychological treatment on an instrument or other assessment of individual functioning that is appropriate for individuals with developmental disabilities; or
3. engage in behaviors so disruptive or dangerous that harm to others is likely (e.g., hurts or attempts to hurt others, such as hitting, biting, throwing things at others, using or threatening to use a weapon or dangerous object). Behaviors are recurrent, not a single instance; or
4. engage in behaviors that have resulted in actual physical harm to the child himself/herself, such as bruising, lacerations or other tissue damage, or would result in physical harm if the child was not physically restrained. Behaviors are recurrent, not a single instance. Behaviors are not the result of clinically suicidal intent.

B. Services. Services provided will include:

1. necessary evaluations;
2. family education and training;
3. clinical interventions;
4. periodic follow-up;
5. linkages to emergency mental health services in crisis situations; and
6. services routinely performed by psychologists in the practice of psychology.

Implementation of this emergency rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood  
Secretary

0204#058

**DECLARATION OF EMERGENCY**

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

Professional Services Program  
Physician Services  
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953.B(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses professional services in accordance with an established fee schedule for Physicians' Current Procedural Terminology (CPT) codes, locally assigned codes and Health Care Financing Administration Common Procedure Codes (HCPC). Reimbursement for these services is a flat fee established by the bureau minus the amount which any third party coverage would pay.

As a result of the allocation of additional funds by the Legislature during the 2000 Second Extraordinary Session, the bureau restored a 7 percent reduction to the reimbursement rates for selected locally assigned HCPCS and specific CPT-4 procedure codes. In addition, the reimbursement fees for certain CPT-4 designated procedure codes were increased (*Louisiana Register*, Volume 27, Number 5). The Bureau now proposes to increase the reimbursement for certain designated CPT-4 procedure codes related to specialty services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Professional Services Program and recipient access to providers of these medically necessary services. It is estimated that implementation of this emergency rule will increase expenditures in the Medicaid Program by approximately \$207,321 for state fiscal year 2001-2002.

**Emergency Rule**

Effective for dates of service on or after April 1, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases reimbursement for certain designated procedure codes related to specialty services.

Reimbursement for the following designated Physicians-Current Procedural Terminology (CPT) codes is increased to 70 percent of the 2002 Medicare allowable fee schedule.

CPT-4 Code	Description
33960	External Circulation Assist
43760	Change Gastrostomy Tube; Simple
57452	Examination of the Vagina
62270	Spinal Fluid Tap, Diagnostic
64640	Injection Treatment of Nerve
85102	Bone Marrow Biopsy

90784	Therapeutic Injection IV
93501	Right Heart Catheterization Only
93510	Left Heart Catheterization, Percutaneous
95810	Polysomnography, 4 or more
96410	Chemotherapy Administration Intravenous

Implementation of this Emergency Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this Emergency Rule. A copy of this emergency rule is available for review by interested parties at parish Medicaid offices.

David W. Hood  
Secretary

0204#059

**DECLARATION OF EMERGENCY**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

Licensure Procedures (LAC 46:LXXXV.301 and 303)

The Louisiana Board of Veterinary Medicine has adopted the following Emergency Rule effective April 4, 2002, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B, and the Veterinary Practice Act, R.S. 37:1518 et seq., and it shall be in effect for the maximum period allowed under law or until adoption of the Rule, whichever occurs first. The proposed Emergency Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Due to imminent peril to the health, safety, and welfare of the public, the members of the Louisiana Board of Veterinary Medicine have adopted these emergency rule amendments to assist in its ability to certify the education of foreign veterinary school graduates prior to receiving licensure to practice veterinary medicine in Louisiana. The current education certification program being accepted has proven to have an extensive time duration for completion due to a backlog of applicants with the steady increase of American students attending foreign veterinary schools and returning to the United States to practice. A new program has been developed and found equivalent to the presently accepted program. Acceptance of both programs could possibly shorten the currently accepted program's completion time and allow qualified applicants to become licensed to practice veterinary medicine sooner. Participants of the new program may complete the program and be ready for licensure as early as Fall 2002. The emergency rule amendments will assist the board in ensuring there is a satisfactory number of qualified veterinarians licensed in Louisiana to provide veterinary services to the public. The emergency amendments to the rule are set forth below.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 3. Licensure Procedures**

**§301. Applications for Licensure**

A. - B.7. ...

8. Prior to licensure in Louisiana, a foreign veterinary school graduate must provide to the Board proof of successful completion of the Educational Commission for Foreign Veterinary Graduates (ECFVG) program offered through the American Veterinary Medical Association (AVMA) or the Program for the Assessment of Veterinary Education Equivalence (PAVE) program offered through the American Association of Veterinary State Boards (AAVSB).

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 8:66 (February 1982), amended LR 10:464 (June 1984), LR 16:224 (March 1990), LR 19:343 (March 1993), LR 23:964 (August 1997), LR 25:2231 (November 1999), LR 28:

**§303. Examinations**

A.1. - 3. ...

4. A candidate for examination must be:

a. ...

b. currently enrolled in or certified by the AVMA's ECFVG program or the AAVSB's PAVE program; or

A.4.c. - D. ...

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 8:66 (February 1982), amended LR 19:344 (March 1993), LR 19:1327 (October, 1993), LR 23:964 (August, 1997), LR 25:2232 (November 1999), LR 28:

Kimberly B. Barbier  
Administrative Director

0204#047

**DECLARATION OF EMERGENCY**

**Board of Examiners for the New Orleans  
and Baton Rouge Steamship Pilots**

Drug and Alcohol Policy (LAC 46:LXXVI.Chapter 2)

This commission has declared an emergency that necessitates the printing and passage of rules and regulations relative to a comprehensive drug and alcohol testing of river pilots. There is an imminent peril facing the pilotage industry wherein any river pilot under the jurisdiction of this commission who may be under the influence and effects of any drug or alcohol that may otherwise affect his/her performance that the safety and welfare of persons and property require extensive oversight. The attached proposed rules and regulations are to remain in effect for a minimum of 120 days or until promulgation of the final rules are complete, whichever occurs first. The effective date of this Emergency Rule is March 19, 2002.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part LXXVI. Pilots**

**Chapter 2. Drug and Alcohol Policy**

**§201. Purpose/Statement of Policy**

A. Due to the safety sensitive nature of the duties performed by NOBRA pilots, the Board of Examiners/ Board of Review will maintain and enforce a strict policy of zero tolerance for the use of prohibited drugs and the misuse of alcohol. Prohibited drugs will not be used, possessed, nor distributed by any NOBRA pilot, at any time, whether on duty or off duty.

B. To this end, all state commissioned NOBRA Pilots shall be subject to drug and alcohol testing as per U.S. DOT rules (49 CFR Part 40) and U.S. Coast Guard regulations (46 CFR Parts 4, 5 and 16). This testing is federally mandated and all rules for specimen collection, handling, testing, confirmation, reporting and medical review shall be adhered to at all times. Additionally, in order to maintain its policy of zero tolerance, the Board of Examiners/Board of Review hereby establishes a more stringent drug screening program, over and above the federal rules. All NOBRA pilots, apprentices and applicants shall be subject to this more stringent drug screening program, in addition to any testing required under the federal rules. As outlined below, this more stringent drug screening program shall consist of screening in the following situations: pre-employment, random, post accident, reasonable suspicion, return to duty and follow-up.

C. Any violation of this drug and alcohol policy shall be reported to the U.S. Coast Guard and shall subject the pilot to disciplinary action by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§203. Definitions**

A. As used in this chapter:

*Administrative Procedure Act*(APA) the Louisiana Administrative Procedure Act under R.S. 49:950, et seq.

*Alcoholic Beverage*Any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

*Applicant*Any person who completes the written application supplied by the Board of Examiners to become a NOBRA Pilot.

*Apprentice*Any person duly elected by the members of the NOBRA Association, but not yet commissioned, to serve in an orientation program, as directed by the Board of Examiners.

*Board of Examiners*the Board of Examiners for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1041, et seq.

*Board of Review*the Board of Review for the New Orleans and Baton Rouge Steamship Pilots, as established by R.S. 34:1049, et seq.

*NOBRA Pilot or Pilot*Ca commissioned Mississippi River pilot for the territory established in R.S. 34:1041, et seq.

*Prescription Medication* Any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

*Prohibited Drug(s)* Any and all controlled dangerous substances as defined in R.S. 40:961(7); any substances which are illegal under Federal, State, or local laws; this term shall include, but is not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and/or stimulants not prescribed for current personal treatment by a licensed physician, as defined by R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:

#### **§205. Circumstances for Drug Testing**

A. Regular and random, unannounced urine and hair drug screening shall be done at a frequency designed to assure the Board of Examiners/Board of Review, the State, shipping clients and the general public that the NOBRA pilots are dedicated and aggressive in their enforcement of their zero tolerance policy towards prohibited drugs.

B. Additionally, the Board of Examiners/Board of Review reserves the right to require a pilot to submit to a drug screen whenever the Board of Examiners has reasonable suspicion to suspect a pilot is under the influence of a prohibited drug. Such a drug screen may be done by means of urine, hair, blood or any other type of screen chosen by the Board of Examiners/ Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

#### **§207. Urine Testing**

A. Any pilot involved in an accident or incident while performing their duties as a pilot shall be subject to a urine drug screen test, as required by these rules, U.S. DOT rules and U.S. Coast Guard regulations. This urine drug screen shall consist of an expanded screening panel designed to detect various illegal drugs, and commonly abused prescription drugs, which are not detected by standard U.S. DOT screens. The expanded panel shall be determined from time to time at the discretion of the Board of Examiners/ Board of Review. The results of all drug screens taken pursuant to this paragraph shall become part of the pilot's permanent personnel file.

B. In addition to these required drug screens, all NOBRA pilots shall be subject to random urine screening by means of the expanded screening panel. This random urine screen will be at a rate of a minimum of six pilots per month. The Board of Examiners/Board of Review shall design a protocol for the random selection of the pilots to be tested. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

#### **§209. Hair Testing**

A. Every NOBRA pilot shall submit to a hair drug screen on a bi-annual basis. The timing of the bi-annual hair drug screens for each pilot shall be randomly selected as per a protocol designed by the Board of Examiners/Board of

Review. Each pilot shall appear for his/her hair drug screen when notified to do so by the Board of Examiners/Board of Review. This hair screen is designed to detect various illegal drugs, and commonly abused prescription drugs, which may have been used by a pilot. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

#### **§211. Split Sample/Safety Net Testing**

A. Whenever there is a positive test result, of any type, returned as to any pilot, that pilot shall be entitled to the following split sample/referee sample testing or safety net testing as is possible through the board's designated testing facilities.

B. The board shall designate, from time to time, an authorized testing facility or laboratory that is responsive and responsible to the needs of the board. Such designation may be unilaterally and exclusively changed by the board at any time for any reason. The board, after such change, shall reasonably notify all applicants, apprentices and pilots.

C. The designated testing facility or laboratory shall ensure and be responsible that all specimen collection and related procedures are properly followed and maintained.

D. The designated testing facility or laboratory shall be responsible for the safeguarding of all specimen collection facilities, equipment and samples collected.

E. The taking of samples shall be taken, witnessed and handled in accordance with the recognized community standard.

F. The designated testing facility or laboratory shall assist in ensuring that the sample will be correctly and properly transferred for testing purposes.

G. The following procedure is hereby established for the testing of a split or referee urine, blood or hair sample.

1. Upon the timely request of a pilot, a urine or blood specimen may be split or divided into approximately equal parts; one being processed for initial laboratory testing for detection of the presence of prohibited drugs or substances therein; the remaining or second part shall be identified as the split or referee sample to be processed for future testing under the following procedures. Failure to timely request the taking of a split or referee sample shall be deemed, classified and designated as a waiver of any and all rights to have a split or referee sample.

2. As to hair, upon notice that a test result has been returned or reported as positive, the pilot shall have 24 hours to notify the testing facility that the pilot requests that the referee sample be properly taken and tested. Failure of the pilot to timely notify the testing facility that the referee sample is to be tested shall be deemed, classified and designated as a waiver and forfeiture of having the referee sample tested.

3. The split or referee sample may, at the election of the pilot, be tested by an alternate testing facility or laboratory, as pre-approved by the board.

H. All test reports shall be submitted to this board in writing.

I. Reports to this board shall present documentary or demonstrative evidence acceptable in the scientific

community and be admissible in court in support of a professional opinion as to the positive findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§213. Effect of Positive Drug Screen/Disciplinary Action**

A. Any NOBRA pilot with a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen shall be reported to the U.S. Coast Guard and may place the pilot's license in jeopardy. Any NOBRA pilot testing positive for a prohibited drug, or residual thereof, shall be removed from duty, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot who presents a positive drug screen shall be subject to disciplinary action by the Board of Examiners/Board of Review, including the recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the Board of Examiners/Board of Review on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at his/her own personal expense. In addition, the evaluation and treatment facility must be pre-approved by the Board of Examiners/Board of Review.

C. Refusing a drug screen, or any attempts at alteration or substitution of samples is considered a violation of the federal rules, as well as this policy. Any NOBRA pilot who refuses to submit to a drug screen, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, avoiding the directions of the Board of Examiners/Board of Review after an accident/incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the Board of Examiners/Board of Review to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the Board of Examiners/Board of Review. Failure to proceed to the testing facility in the time allowed by the Board of Examiners/Board of Review, which shall be determined at the time, but shall not exceed three hours, shall be considered a refusal to test and will subject the offending pilot to disciplinary action by the Board of Examiners/Board of Review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§215. Prescription Drug Use**

A. Every NOBRA pilot has a duty to ascertain whether a prescription medication, legally prescribed, will impair his/her ability to perform his/her piloting duties. If, after consultation with his/her treating physician, a pilot reasonably believes or has been informed or advised that a prescription medication may cause impairment, the pilot shall inform the Board of Examiners/Board of Review and remove himself/herself from duty until such time that his treating physician, in consultation with a physician specializing in occupational medicine, certifies that he/she may return to duty or changes the medication to one which will not impair the pilot.

B. If a drug screen indicates that a pilot has in his/her system a prescription drug which may impair his/her ability to perform their piloting duties, and the pilot has not voluntarily taken leave, the pilot shall be removed from duty, without pay, pursuant to §111.L of the Commission's rules, until such time that the Board of Examiners/Board of Review, in consultation with a physician specializing in occupational medicine, or any other medical professional, can determine that the pilot is fit to return to duty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

**§217. Alcohol Use**

A. No pilot shall consume any alcohol, of any nature whatsoever, within six hours before, or during, the performance of their piloting duties. Alcohol testing shall be conducted following any accident involving a pilot in the performance of their duties. The Board of Examiners and/or the Board of Directors may also require a pilot to submit to alcohol testing upon reasonable suspicion that a pilot is performing his duties while under the influence of alcohol.

B. Alcohol testing may occur while a pilot is on duty or for six hours prior to coming on duty. Duty, in this case, shall be defined as the time the pilot is ordered on board the vessel. Testing positive for alcohol while on duty is directly reportable to the Board of Examiners/Board of Review and is not subject to review by a Medical Review Officer, as there is never a medical reason to use any form of alcohol internally while on duty. Any pilot who requires medicines, such as cough and cold medications, which may have a small amount of alcohol, should ask their physician or pharmacist to recommend a non-alcoholic medication. While the U.S. Coast Guard prohibits alcohol use above the level of 0.04 percent BAC, the Board of Examiners reserves the right to take disciplinary action on lower alcohol levels, depending on the facts and circumstances of each particular case.

C. Any positive alcohol test shall be reported to the U.S. Coast Guard and may place the pilot's federal license in jeopardy. Any NOBRA pilot testing positive for alcohol shall be removed from duty as a pilot, pursuant to §111.L of the commission's rules, pending a hearing pursuant to R.S. 34:1042. Any NOBRA pilot with a positive alcohol test shall be subject to disciplinary action by the Board of Examiners, including recommendation of revocation or suspension of their commission by the Governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall

be determined by the Board of Examiners on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for alcohol abuse shall do so at his own personal expense. In addition, the evaluation and treatment facility must be approved by the Board of Examiners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§219. Confidentiality**

A. The results of all positive drug screens and alcohol tests shall be confidential and shall not be disclosed to any entity or person other than:

1. the Governor of Louisiana and the Board of Directors of the New Orleans/Baton Rouge Steamship Pilots Association; and

2. the U.S. Coast Guard; and

3. in the event that the Board of Examiners/Board of Review determines that a hearing is required pursuant to R.S. 34:1042, there shall be no requirement of confidentiality in conducting the hearing.

B. In addition, the records of any pilot maintained by the Board of Directors of NOBRA shall not be confidential and shall be available to the Board of Examiners/Board of Review in connection with any investigation regarding the use of prohibited drugs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§221. Severability**

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

### **§223. Applicable Procedures**

A. Any investigation, action or disciplinary proceeding undertaken in conjunction with this policy shall be conducted in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq. At such time as the Board of Examiners promulgates its own investigatory and procedural rules, pursuant to R.S. 49:953, those rules shall supersede those of the Louisiana Administrative Procedure Act and become applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:

Robert A. Barnett  
Executive Director

0204#014

## **EMERGENCY RULE**

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

Experimental Fisheries Program Permits (LAC 76:VII.701)

The secretary of the Department of Wildlife and Fisheries does hereby exercise the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, and pursuant to its authority under R.S. 56:571, adopts the rule as set forth below. This Emergency Rule is necessary to adopt changes to the rule governing the take of underutilized species of fish. Recent court decisions have indicated that certain provisions in the experimental fisheries program are not enforceable. Without the proposed modifications to the Rule, no new permits will be issued. Commercial fishermen will be unable to utilize the permitting program, thus directly impacting their welfare. Additionally, the welfare of the new crawfishermen dependent on utilizing bait caught through this program will also be affected. New permits are issued on a calendar year basis and in order to have the changes effective in time to issue new permits, utilization of the declaration of emergency is necessary.

This declaration of emergency shall become effective April 30, 2002, and shall remain in effect for the maximum period allowed under the Administrative Act or until adoption of the final Rule, whichever occurs first.

#### **Title 76**

#### **WILDLIFE AND FISHERIES**

#### **Part VII. Fish and Other Aquatic Life**

#### **Chapter 7. Experimental Fisheries Programs**

#### **§701. Permits**

A. - B.9. ...

10. Permitted vessel and permitted gear is the specific gear and vessel designated on the permit.

11. When a permit is issued, only the permitted specie(s) can be retained. All other species shall be immediately returned to waters from which they were caught. No other fish may be in the possession of the permittee and all fish on board the permitted vessel shall have the head and caudal fin (tail) intact.

12. The permittee shall have the permit in possession at all times when using permitted gear or harvesting permitted specie(s). Permit holder shall be on board permitted vessel when operating under conditions of permit. No permit is transferable without written permission from the department secretary.

13. When permitted gear is on board permitted vessel or in possession of permittee, permittee and vessel are assumed to be operating under conditions of the permit. No gear other than permitted gear may be on board or in possession of permittee.

14. If citation(s) are issued to any permittee for violation of a Class Two fish or game law or conditions regulated by the permit, all permittee's permits shall be suspended until such time as the permittee appears before the department's officials for the purpose of reviewing the

citation(s) issued. The secretary, after reviewing the proceedings, may reinstate or revoke the permit, and the permittee may lose all rights and privileges to participate in the program.

15. Any violation of the conditions of the permit shall result in the immediate suspension of the permit and forfeiture of the deposit and may result in the permanent revocation of the permit.

C. - D.8. ...

9. The Harvest of Shad (*Dorosoma sp.*) and Skipjack (*Alosa chrysochloris*) with an Experimental Seine

a. Closed Seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental seine permit shall be closed during the months of July, August, September and October of each year. Shad and skipjack may not be taken commercially with an experimental seine at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental seine under the provisions of this section shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental seine during the period after sunset and before sunrise.

iii. Experimental seines shall not be used in areas closed to seining.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental seine is a seine with a mesh size not less than 1 inches bar and 2 inches stretched and not more than 2 inches bar and 4 inches stretched, not exceeding 1,200 feet in length. The experimental seine may not be constructed of monofilament.

iii. Only "strike" fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the seine then placed around the selected school.

iv. The use of more than one experimental seine from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental seine at one time.

vi. Experimental seines shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Net shall not be left unattended as defined in Title 56. Experimental seine shall be actively fished at all times by the permittee.

viii. Each experimental seine shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in the freshwater areas of the state.

x. All provisions of Title 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

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

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one experimental seine permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in Title 56.

v. The permitted gear must be properly licensed as a fish seine.

e. General Provisions. Effective with the closure of the season for using the experimental seine permit for shad and skipjack, the possession of the experimental seine on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

10. Shad (*Dorosoma sp.*) and Skipjack (*Alosa chrysochloris*) Gill Net Permit (Lac des Allemands Only)

a. Closed Seasons, Times and Areas

i. The season for the commercial taking of shad and skipjack under the provision of the experimental gill net permit shall be closed during the months of July, August, September and October of each year. Shad and skipjack may not be taken commercially with an experimental gill net at any time outside of this season.

ii. Commercial harvest of shad and skipjack with an experimental gill net under the provisions of this section shall not be allowed on Saturday and Sunday. There shall be no commercial taking of shad and skipjack with an experimental gill net during the period after sunset and before sunrise.

iii. Experimental gill net shall not be used in areas closed to gill netting.

b. Commercial Taking

i. Only shad and skipjack may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permitted and all fish on board of the permitted vessel shall have the head and caudal fin (tail) intact.

ii. An experimental gill net is a gill net with a mesh size not less than 1 inch bar and 2 inches stretched and not more than 2 inches bar and 4 inches stretched, not exceeding 1,200 feet in length.

iii. Only "strike" gill net fishing will be permitted; this means the school of fish to be taken must be visible from the surface and the gill net then placed in or directly near the selected school. Once deployed, the experimental gill net is to remain stationary until being run (gill net remains in place while fish are removed) or gill net is retrieved (gill net remains in place until lifted into boat).

iv. The use of more than one experimental gill net from any one or more vessels at any time is prohibited.

v. No more than two vessels may fish an experimental gill net at one time.

vi. Experimental gill net shall not be used in a manner that unduly restricts navigation of other vessels.

vii. Net shall not be left unattended as defined in Title 56.

viii. Each experimental gill net shall have attached to each end a 1-gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number shall be legibly displayed on the jug.

ix. The permitted gear shall only be fished in Lac des Allemands. Streams, bayous, canals and other connecting waterbodies are not included in this permit.

x. All provisions of Title 56 shall apply to persons involved in any experimental fishery or possessing any commercial gear.

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

d. Permits

i. Any person who has been convicted of an offense under the provisions of the experimental fishery permit program shall not participate in the harvest, in any manner, of fish taken under an experimental permit.

ii. No person shall receive more than one gill net permit to commercially take shad and skipjack.

iii. This permit along with other applicable licenses authorize the bearer to sell his shad and skipjack herring.

iv. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in Title 56.

v. The permitted gear must be properly licensed as a freshwater gill net.

e. General Provisions. Effective with the closure of the season for using the experimental gill net permit for shad and skipjack, the possession of the experimental gill net on the waters of the state shall be prohibited. Nothing shall prohibit the possession, sale, barter or exchange off the water of shad and skipjack legally taken during any open

period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4 and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S. 56:306.

11. Experimental Freshwater River Shrimp (*Macrobrachium ohione*) Permit

a. May experimentally fish a wire mesh shrimp net, 1/4 inch bar, 6 feet in length in the Intercoastal Canal and Mississippi River within 1.5 miles of the boat ramp adjacent to the locks in Port Allen.

b. Only freshwater river shrimp may be taken; all other species shall be immediately returned to waters from which they were caught; no other fish may be in the possession of the permittee.

c. The permittee shall have the permit in possession at all times when using permitted gear; permittee shall be on board permitted vessel when operating under conditions of permit.

d. The permitted gear must be properly licensed as a Shrimp Trawl and may be fished in freshwater areas only.

e. Permitted gear must be marked using a 1 gallon jug painted international orange and marked with black lettering; the word "experimental" and the permit number should be legibly displayed on the jug.

f. This permit may be canceled at any time if in the judgment of the secretary or his designee, the permit is being used for purposes other than that for which the permit was issued.

g. Violating any provision or regulations of the experimental fishery permit shall deem a person not to be operating under the provisions of the program and shall subject the individual to the statutory requirements and penalties as provided for in Title 56.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:571.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 12:119 (February 1986), amended LR 12:847 (December 1986), amended by the Office of Fisheries, LR 15:1098 (December 1989), amended by the Wildlife and Fisheries Commission, LR 28:

James H. Jenkins, Jr.  
Secretary

0204#023