

Emergency Rules

DECLARATION OF EMERGENCY

Department of Environmental Quality
Office of the Secretary

Incorporation by Reference of Amendments to the CAA
(LAC 33:III.5122)(OS043E)

In accordance with the emergency provisions of R.S. 49:953.B of the Administrative Procedure Act, which allows the Department of Environmental Quality (department) to use emergency procedures to establish rules, and R.S. 30:2011, the secretary of the department hereby finds that imminent peril to the public welfare exists and accordingly adopts by reference into LAC 33:III.5122.A, EPA rule entitled "National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions and Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)," promulgated on April 5, 2002, in the *Federal Register*.

This action is necessary to ensure consistency between the state rule and the revised federal rule.

The 40 CFR 63 Subpart B provisions as currently incorporated into state rule require a major source with a source category for which MACT has not been promulgated by May 15, 2002, to submit a Title V permit application by May 15, 2002, which includes a case-by-case MACT determination. The 40 CFR 63 Subpart B revisions as noticed in the *Federal Register*/ Vol. 67/ No. 66/Friday, April 5, 2002 [16582-16611], require a facility to submit only a Part 1 permit application. A complete (Part 2) permit application will be submitted 24 months later. Title V permit applications are complex, and their completion and submittal by May 15, 2002, would put these regulated facilities at a competitive disadvantage with other similar facilities in the nation.

This Emergency Rule is effective on May 15, 2002, and shall remain in effect for a maximum of 120 days or until promulgation of final rule OS043*, whichever occurs first. Rule OS043*, which incorporates by reference this EPA rule, is expected to become final on May 20, 2002. For more information concerning OS043E, you may contact the Regulation Development Section at (225) 765-0399.

J. Dale Givens
Secretary

0205#039

DECLARATION OF EMERGENCY

Office of the Governor
Division of Administration
Racing Commission

Net Slot Machine Proceeds (LAC 35:III.5737)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953.B, and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective April 22, 2002, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to adopt this Rule to expand on the statutes involving slot machines housed at racing associations, specifically R.S. 27:353, R.S. 27:354 and R.S. 27:361, and specify certain provisions thereof.

Title 35

HORSE RACING

Part III. Personnel, Registration and Licensing Chapter 57. Associations= Duties and Obligations

§5737. Net Slot Machine Proceeds

A. The commission, pursuant to R.S. 27:354, finds that it is in the best interests of licensed associations, breeders associations, horsemen, and the state that the annual payments provided for in RS. 27:361 be paid in monthly installments.

B. The definitions set forth in R.S. 27:353 are incorporated herein by reference.

C. Not later than the date on which an association installs slot machines at its facility, it shall open three separate checking accounts as provided for herein. One account shall be a control bank account into which not less than 18 percent of the net slot machine proceeds for the activity month shall be deposited in sufficient time to be distributed or disbursed not later than the 20th day of the following month as required by these rules. The association shall also open two distinct interest bearing accounts, one for thoroughbred purse proceeds and one for quarter horse purse proceeds, into which the association shall make its deposits for purse supplements totaling 15 percent of net slot machine proceeds and from which funds, including interest earned, such purse supplements shall be made available as provided by law and these rules.

D. While an association is conducting live racing, the monies due to be paid pursuant to R.S. 27:361.B.(4)(a) shall be made available monthly for use as purses prior to the 20th day of the month following the month in which they are earned, during the current race meeting.

E. While an association is not conducting live racing, the monies due to be paid pursuant to R.S. 27:361.B.(4)(a) shall be deposited in the appropriate breed account either:

1. for accrual until the first day of the next live race meeting conducted by that association for that breed, at which time such accumulated monies, including interest, shall be used to supplement appropriate purses during that race meeting; or

2. with prior written agreement of the Louisiana HBPA for reimbursement to the association for actual funds advanced to supplement purses at a preceding race meeting in anticipation of the revenue to be earned from slot machines. However, an association shall not be reimbursed except from proceeds earned during the same annual period during which it advanced the purse supplements.

F. The monies due to be paid by an association pursuant to R.S. 27:361.B.(4)(b) and (c) shall be remitted monthly to the appropriate breeders association and the monies due to be paid by an association pursuant to R.S. 27:361.B.(4)(a)(i) and (ii) shall be remitted monthly to the HBPA, prior to the 20th day of the month following the month in which they are earned.

G. Each racing association conducting slot machine gaming shall file with the commission a complete report, on a form acceptable to the commission, not later than the 20th day of each month, setting forth the amounts deposited and payments made from the net slot machine proceeds earned the preceding month, as well as payments for purses and payments to breeders associations and to the HBPA. Copies of those bank accounts required to be maintained by paragraph C of this rule shall be submitted to the commission along with the monthly report.

H. Each racing association, after conducting slot machine gaming for 12 months, shall file an annual report with the commission, on forms acceptable to the commission, not later than the 20th day of the following month, and on that date each following year, which report shall certify under oath by a responsible officer the association's compliance with all requirements under R.S. 27:361.B.(4) and under this rule. Each such 12-month period shall constitute an annual period for the purposes of this rule.

I. All records and reports pertaining to slot machines, including checking accounts, maintained by an association shall be subject to inspection, reporting procedures and audits by the commission. All records and reports on revenues and expenses from slot machines shall be included as part of the association's annual CPA opinion audit submitted to the commission.

J. Before receiving any payments provided by R.S. 27:361.B.(4)(b) or (c), the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission the schedule or formula and within a time period which it has established for the distribution of such funds. Any amendments or modifications to such distribution schedule or formula shall be filed with the commission within 30 days of its adoption by the Executive Committee. A true and complete copy of each such filing with the commission shall be delivered to each racing association and the filing shall so

certify delivery. Each Executive Committee shall also file a monthly report with the commission of revenue received, payments made, and the bank balance on hand along with a copy of the bank statement.

K. After the expiration of one year from the filing of its first distribution schedule or formula with the commission but within 20 days thereafter, and on that date each following year, the respective Executive Committee of the Louisiana Thoroughbred Breeders Association and Executive Committee of the Louisiana Quarter Horse Breeders Association shall file with the commission a report which shall certify under oath by a responsible officer the association's compliance with its applicable distribution schedule or formula and within a time period which it has established for the distribution of such funds.

L. An association shall publicly disclose its schedule for the distribution of funds for purse supplements to be made pursuant to R.S. 27:361.B.(4)(a). Excluding those funds statutorily dedicated to races restricted to accredited Louisiana breeds, the remaining funds shall be distributed proportionately according to the conditions of the races in which the remaining funds are used to insure parity among restricted and non-restricted races.

M. Whenever it appears to the executive director of the commission that a violation may have occurred, he shall furnish the apparent violator with a warning letter, sent by ordinary mail and by fax, affording the party 15 days from the date of the transmission of the letter to correct the violation.

N. If the apparent violation has not been timely corrected, the executive director, or his designee, shall within 10 days give written notice, by certified mail, to the party that its responsible officers are to appear before him for an informal conference to determine whether a violation has occurred and, if so, whether the violation can be corrected in the absence of imposing a fine or indefinitely suspending the license of the party, or refusing to allow the party to receive payments under this rule. Such informal hearing shall be conducted in accordance with the Administrative Procedures Act applicable to such hearing.

O. If the executive director, or his designee, determines after affording the party an opportunity for an informal conference that a violation has occurred and that a fine, license suspension, or other appropriate action should be taken, he shall file a *rule to show cause* with the commission for the notified party and its responsible officers to appear before the commission and show cause why disciplinary action or sanctions should not be imposed. The *rule to show cause* shall be forwarded by certified mail and by fax to the party. The cited party shall have 10 days from transmission, excluding holidays and weekends, to file with the commission a written response, under oath, and to submit a list of the names and addresses of all witnesses it desires to be subpoenaed for the hearing, including those to produce documents and other things. The failure to timely file a verified response may, in the commission's discretion, result in the cited party being refused to participate in the hearing on the *rule to show cause*.

P. At the conclusion of the hearing, the commission shall take action appropriate to the violation if it finds that one has occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:353, R.S. 27:354 and R.S. 27:361.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:

Charles A. Gardiner III
Executive Director

0205#017

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Board of Certification for Substance Abuse Counselors**

Fees (LAC 46:LXXX.501)

The Board of Certification for Substance Abuse Counselors has adopted the following Emergency Rule effective April 13, 2002, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B, and the Substance Abuse Counselor Certification Act, R.S. 37:3371 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 Board of Certification for Substance Abuse Counselors have adopted this Emergency Rule amendment to increase fees to alleviate financial problems immediately facing the board. Such increases in fees do not exceed the "cap" established in the Substance Abuse Counselor Certification Act, R.S. 37:3377.A, as enacted by the state legislature. As a professional regulatory board, the Board of Certification for Substance Abuse Counselors must function totally on self-generated fees and is financially autonomous from the state.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXX. Substance Abuse Counselors

Chapter 5. Fees and Board Documents

§501. Fees

A. - C. ...

D. In accordance with R.S. 37:3377.A of the Substance Abuse Counselor Certification Act. the fee schedule shall be as follows.

Application	\$100
Initial Certification	\$200
Certification by Reciprocity from Another State	\$200
Renewal of Certification	\$200
Late Fee for Renewal of Certification	\$150
Reinstatement of Certification	\$200
Appeal/Evaluation of Exam Decision	\$150
Registration as Counselor in Training or Prevention Specialist in Training	\$ 75
Renewal of Registration as Counselor in Training or Prevention Specialist in Training	\$ 75
Registration as Registered Counselor Supervisor	\$150
Renewal of Registration as Registered Counselor Supervisor	\$150
Registration as Approved Training Institution	\$200
Renewal of Registration as Approved Training Institution	\$200

Registration as Approved Education Provider	\$200
Renewal of Registration as Approved Education Provider	\$200
Registration for Approved Educational Provider Single Course	\$ 60
Registration as Approved Institution of Higher Education	\$200
Renewal of Registration as Approved Institution of Higher Education	\$200
Late Fee for Renewal of Any Registration	\$150

E. All fees are non-refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3374(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certification for Substance Abuse Counselors, LR 15:1075 (December 1989), amended LR 19:628 (May 1993), LR 25:1241 (July 1999), LR 28:

Ellen R. Calvert
Chairman

0205#007

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Board of Physical Therapy Examiners**

Fees (LAC 46:LIV.501)

The Louisiana State Board of Physical Therapy Examiners has adopted the following Emergency Rule effective April 25, 2002, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B, and the Physical Therapy Practice Act, R.S. 37:2401 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 State Board of Physical Therapy Examiners has adopted this Emergency Rule to increase fees to alleviate financial problems facing the Board. Such increases in fees do not exceed the "cap" established in the Physical Therapy Practice Act, R.S. 37:2406, as amended by the State Legislature in 2001. As a professional regulatory board, the Louisiana State Board of Physical Therapy Examiners must function totally on self-generated fees and is financially autonomous from the state.

Title 46

Professional and Occupational Standards

Part LIV. Physical Therapy Examiners

Chapter 5. Fees

§501. Fees

A. The board may collect the following fees.

1. Application fee	\$200
2. Reinstatement fee	\$ 75
3. Annual Renewal fee	\$115
4. License verification	\$ 40
5. Duplicate wall license fee	\$ 50
6. Duplicate wallet license fee	\$ 20

B. The annual renewal fee provided in this Rule shall be received by the Board office prior to January 1 of each year.

C. If the annual renewal fee is received by the Board office on or subsequent to January 1, the applicant shall apply for reinstatement pursuant to Rule 167 and shall pay the renewal fee and the reinstatement fee.

D. The Board may assess reasonable charges with regards to administrative business expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2.A.(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 13:750 (December 1987), LR 15:392 (May 1989), LR 17:667 (July 1991), LR 18:963 (September 1992), LR 21:396 (April 1995), LR 28:

Pat Adams
Chairman

0205#028

DECLARATION OF EMERGENCY

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

**Pharmacy Benefits Management Program
Prior Authorization Process**

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.

Prior law, R.S. 46:153.3, authorized coverage and reimbursement of prescription drugs in the Medicaid Program and established the Medicaid Drug Program Committee. R.S. 46:153.3.B and C allowed the Department of Health and Hospitals to limit reimbursement for multi-source prescription drugs in accordance with state and federal law; but mandated the department to provide reimbursement for any drug prescribed by a physician that, in his professional judgment and within the lawful scope of his practice, was considered appropriate for the diagnosis and treatment of the patient; and also prohibited the department from establishing a drug formulary that restricted, by any prior or retroactive approval process, a physician's ability to treat a patient with a prescription drug that had been approved and designated as safe and effective by the Food and Drug Administration.

In recognition of the need to ensure that the state delivers a medical assistance prescription drug program which is both cost effective and prudently administered, the Louisiana Legislature enacted Act 395 of the 2001 Regular Session to amend R.S. 46:153.3.B.(2)(a) which states "The Department may establish ... or any other process or combination of processes that prove to be cost-effective in the Medical Assistance Program." In addition, the Act created the

Medicaid Pharmaceutical and Therapeutics Committee and abolished the Medicaid Drug Program Committee.

As authorized by Act 395, the department proposes to implement a prior authorization process with a preferred drug list for certain designated drugs covered under the Pharmacy Benefits Management Program. This action is necessary in order to avoid a budget deficit in the Medical Assistance Program. It is anticipated that savings from the prior authorization process will begin to accrue in the calendar quarter after the process is implemented. It is estimated that implementation of this Emergency Rule in conjunction with other drug cost containment actions will decrease projected expenditures in the Prescription Drug Program by approximately \$61,000,000 for state fiscal year 2002-2003.

Emergency Rule

Effective June 10, 2002, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implements a prior authorization process with a preferred drug list for certain designated drugs covered under the Medicaid Pharmacy Benefits Management Program. The following provisions shall govern coverage for prescribed medications and/or supplies.

A. General Provisions

The medication must be prescribed by a practitioner who is authorized to prescribe under state law. The National Drug Code (NDC) must be shown on each pharmacy form for reimbursement of prescription drugs subject to rebates from manufacturers as mandated by federal law and regulations.

B. Covered Drugs

Coverage of drugs shall be limited to specific drug products authorized for reimbursement by therapeutic category and listed by generic name, strength/unit, NDC, and brand name. Those drug products subject to mandatory coverage as a result of a rebate agreement with the federal government will be covered until written notice is received from the Centers for Medicare and Medicaid Services that coverage will be terminated. Providers will be given prior notice of termination of coverage as required under federal regulations.

C. Prior Authorization and Preferred Drug List

A preferred drug list (PDL) shall be established by selected therapeutic classes for those drugs for which prior authorization is not required. Drugs in these classes that are not included on the PDL shall require prior authorization. Providers will be notified of the drugs selected for placement on the PDL by selected therapeutic classes prior to implementation of the prior authorization process and as additional drugs are subsequently added to the list. Lists of covered drug products, including those that require prior authorization, will be maintained in either the Prescription Drug Services Manual, other designated service provider manuals, on the Louisiana Medicaid web site or provider notices.

The prior authorization process provides for a turn-around response within 24 hours of receipt of a prior authorization request by either telephone, mail or electronic communication. In emergency situations, providers may dispense at least a 72 hour supply of medication as mandated by LA R.S. 46:153.3.B.(2)(a) and pursuant to 42 U.S.C. s1396r-8.

The Pharmaceutical and Therapeutics Committee will make recommendations to the department regarding drugs to be subject to the prior authorization. The composition of and appointment to the Pharmaceutical and Therapeutics Committee complies with LA R.S. 46:153.3(D) and 42 U.S.C.s1396r-8.

D. Drugs Excluded from Coverage

As provided by Section 1927(d)(2) of the Social Security Act, the following drugs are excluded from program coverage:

1. experimental drugs;
2. anorexics;
3. cough and cold preparations;
4. cosmetic drugs;
5. compounded prescriptions (mixtures of two or more ingredients);
6. medications which are included in the reimbursement to a facility, i.e., hospitals, skilled nursing facility for recipients receiving benefits under Part A of Title XVIII, mental hospitals, or some other nursing facilities;
7. non-legend drugs with some exceptions;
8. fertility drugs when used for fertility treatment;
9. vaccines covered in other programs; and
10. DESI Drugs (see E. below).

E. DESI Drugs

Those drugs that are subject to a Notice of Opportunity for Hearing (NOOH), as prescribed by Section 1927(k)(2)(A) of the Social Security Act, for which the Food and Drug Administration has proposed to withdraw from the market because they are "less than effective" or "identical, related, or similar drugs," and are identified as DESI ineffective drugs shall be excluded from coverage.

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, LA 70821-9030. He is responsible for responding to all inquiries regarding this emergency rule. A copy of this Emergency Rule is available at the parish Medicaid office for review by interested parties.

David W. Hood
Secretary

0205#067

DECLARATION OF EMERGENCY

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

Child Welfare Programs (LAC 67:III.5549)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to adopt TANF Initiatives at §5549 effective April 12, 2002. This Emergency Rule will remain in effect for a period of 120 days.

Under the provisions of the Temporary Assistance to Needy Families (TANF) Block Grant, a state may expend its Maintenance of Effort (MOE) funds on a variety of services,

benefits, and supports that help families become self-sufficient. To effectuate the use of its MOE funds, the Office of Family Support will provide support to the Office of Community Services for programs intended to further the goals and intentions of the federal TANF Block Grant. Emergency rulemaking is necessary as failure to meet MOE requirements could result in the loss of MOE funding which in turn could result in the loss of the TANF Block Grant or severe fiscal penalties which would result in a loss or reduction of services funded by the TANF Block Grant.

Title 67

SOCIAL SERVICES

PART III. Office of Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5549. OCS Child Welfare Programs

A. OCS shall enter into a Memorandum of Understanding with the Office of Community Services (OCS), the state child welfare agency, in order to collaborate with it to identify and serve children in needy families who are at risk of abuse or neglect. The methods of collaboration include:

1. Child Protection Investigation (CPI)Ccomprises services to assess the validity of a report of child abuse or neglect involving a minor child or children residing with a custodial parent or other adult caretaker relative, to determine whether an emergency exists, and when deemed necessary, to develop a safety plan which may include coordination of services, emergency removal and placement, referral to OCS Family Services or another appropriate agency, short term counseling, parenting guidance, and/or arrangements for concrete services, such as the Preventive Assistance Fund (PAF) and Reunification Assistance Fund (RAF). CPI, PAF, and RAF activities were previously part of the OCS Emergency Assistance Program, for which federal TANF funds are deemed eligible under section 404(a)2) of 42 USC 604;

2. Family ServicesCcomprises services to a child or children and their parents or adult relative caretakers, after an allegation of child neglect or abuse has been validated, to assist in preventing the removal of a child from his care giver or, where temporary emergency removal has already occurred in validated abuse and/or neglect cases, to help reunite the family by returning the child. Services are also provided to a family who requests protective services on its own when it is believed that a child in the family would be at risk. Elements of Family Services include problem identification, family assessment, risk assessment, safety planning, case planning, counseling, problem resolution, provision of or arrangements for needed services, and/or concrete aid through the Preventive Assistance Fund.

B. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

C. Financial eligibility for those services attributable to TANF/Maintenance of Effort funds is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP)

benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), or Supplemental Security Income (SSI).

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq.; R.S. 46:231 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Gwendolyn P. Hamilton
Secretary

0205#027

DECLARATION OF EMERGENCY

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

**Substance Abuse Treatment Program
(LAC 67:III.1291 and 5391)**

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953.B, to adopt §1291 in the Family Independence Temporary Assistance Program (FITAP) and §5391 in the Kinship Care Subsidy Program (KCSP).

These regulations are implemented pursuant to the Temporary Assistance for Needy Families (TANF) Initiatives provided for in Act 12 of the 2001 Regular Session of the Louisiana Legislature.

This Emergency Rule is effective May 27, 2002, and will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of January 26, 2002, since it is effective for 120 days and will expire before the final rule takes effect. (The final rule will be published in June 2002.)

Whereas it has been shown that providing substance abuse treatment to drug and/or alcohol-dependent individuals can lead to more responsible behavior which contributes to educational training and job preparation and promotes self-sufficiency, the agency proposes to continue the necessary funding for payment for the cost of substance abuse screening, assessment, testing, and non-medical treatment of KCSP and FITAP recipients and certain post-KCSP and FITAP recipients. Funding for these services was previously provided for by the Department of Health and Hospitals, Office for Addictive Disorders. Medical services provided during treatment will continue to be paid for by the Department of Health and Hospitals, Office for Addictive Disorders.

Authorization for emergency action is also contained in Act 12 of the 2001 Regular Session of the Louisiana Legislature.

**Title 67
SOCIAL SERVICES**

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter D. Special Initiatives

§1291. Substance Abuse Treatment Program

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office for Addictive Disorders (OAD) wherein OFS shall fund the cost of substance abuse screening and testing and the non-medical treatment of FITAP recipients as well as certain post-FITAP recipients.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by providing needy families with substance abuse treatment so that they may become self-sufficient in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, specifically, family members who receive FITAP benefits. A needy family member who loses eligibility for FITAP benefits for any reason shall continue to be eligible for these services for the one-year period following the loss of FITAP benefits.

D. Services are considered non-assistance by the agency.

E. A pilot project will be conducted in the following parish offices: Orleans (Uptown District), Jefferson (West Bank), East Baton Rouge (North District), Terrebonne, St. Landry, Calcasieu, Rapides, Caddo, Ouachita, and Tangipahoa. OAD will assume responsibility for the screening and referral process provided below.

1. Compliance. All adult recipients of FITAP must be free from the use of or dependency on illegal drugs or abuse of or dependency on alcohol. All applicants for and recipients of FITAP benefits, age 18 and over, must satisfactorily comply with the requirements of the substance abuse screening, testing, education and rehabilitation process. An illegal drug is a controlled substance as defined in R.S. 40:961, Controlled Dangerous Substance, et seq..

2. Screening and Referral Process. All adult applicants for and recipients of FITAP will be screened for the use of or dependency on illegal drugs or abuse of or dependency on alcohol, at initial application and redetermination of eligibility using a standardized substance abuse screening test approved by the Department of Health and Hospitals, Office for Addictive Disorder (OAD).

a. When the screening process indicates that there is reason to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, or when there is other evidence that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, the

recipient will be referred to OAD to undergo appropriate substance abuse assessment which may include urine testing. The referral will include a copy of the screening form, a copy of the Release of Information Form, and a photograph of the individual for identification purposes.

b. Additionally, if at any time OFS has reasonable cause to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, based on direct observation or if OFS judges to have reliable information of use or dependency on illegal drugs or abuse or dependency on alcohol received from a reliable source, the caseworker will refer the recipient to OAD to undergo appropriate substance abuse assessment which may include urine testing. All such referrals will require prior approval by the supervisor of the caseworker.

c. OAD will advise OFS of the results of the formal assessment. If the formal assessment determines that the recipient is not using or dependent on illegal drugs and not abusing or dependent on alcohol, no further action will be taken unless subsequent screening or other evidence indicates a reasonable suspicion of substance abuse. If the formal assessment determines that the recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, OAD will determine the extent of the problem and recommend the most appropriate and cost effective method of education and rehabilitation. The education or rehabilitation plan will be provided by OAD or by a contract provider and may include additional testing and monitoring. The OAD assessment will include a determination of the recipient's ability to participate in activities outside of the rehabilitation program.

3. Child care and transportation costs required for participation in the substance abuse screening, testing, education, and rehabilitation program will be paid by the Office of Family Support.

4. If residential treatment is recommended by OAD and the recipient is unable to arrange for the temporary care of dependent children, OFS and/or OAD will coordinate with the Office of Community Services to arrange for the care of such children.

5. Failure to Cooperate. Failure or refusal of a recipient to participate in substance abuse screening, testing, or participation in the education and rehabilitation program, without good cause, will result in the following.

a. The recipient's needs will be removed from the FITAP cash benefits for three months. Eligibility of the other family members will continue during this three-month period.

b. If the recipient cooperates during this three-month period, the recipient will regain eligibility for cash benefits effective the fourth month.

c. If the recipient does not cooperate during this three-month period, the FITAP cash case for the entire family will be closed effective the fourth month and will remain closed until the individual cooperates.

d. A subsequent failure to cooperate will result in case closure until the recipient cooperates. Cooperation is defined as participating in the component in which the recipient previously failed to cooperate. This includes substance abuse screening, testing, or satisfactory participation for two weeks in an education and rehabilitation program.

6. If after completion of education and rehabilitation, the recipient is subsequently determined to use or be dependent on illegal drugs or abuse or be dependent on alcohol, the recipient will be ineligible for FITAP cash benefits until such time that OAD determines that the individual has successfully completed the recommended education and rehabilitation program and is substance abuse free. The eligibility of other family members will not be affected as long as the individual participates in the education and rehabilitation program.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

**Subpart 13. Kinship Care Subsidy Program (KCSP)
Chapter 53. Application, Eligibility, and Furnishing Assistance**

Subchapter D. Special Initiatives

§5391. Substance Abuse Treatment Program

A. The Office of Family Support shall enter into a Memorandum of Understanding with the Office for Addictive Disorders (OAD) wherein OFS shall fund the cost of substance abuse screening and testing and the non-medical treatment of KCSP recipients as well as certain post-KCSP recipients.

B. These services meet the TANF goal to end the dependence of needy families on government benefits by providing them with substance abuse treatment so that they may become self-sufficient in order to promote job preparation, work, and marriage.

C. Eligibility for services is limited to needy families, specifically, family members who receive KCSP benefits. A needy family member who loses eligibility for KCSP benefits for any reason shall continue to be eligible for these services for the one-year period following the loss of KCSP benefits.

D. Services are considered non-assistance by the agency.

E. A pilot project will be conducted in the following parish offices: Orleans (Uptown District), Jefferson (West Bank), East Baton Rouge (North District), Terrebonne, St. Landry, Calcasieu, Rapides, Caddo, Ouachita, and Tangipahoa. OAD will assume responsibility for the screening and referral process provided below.

1. Compliance. All recipients of KCSP benefits, age 18 and over, must satisfactorily comply with the requirements of the substance abuse screening, testing, education, and rehabilitation process.

2. Screening and Referral Process. All applicants for and recipients of KCSP age 18 and over will be screened for the use of or dependency on illegal drugs or abuse of or dependency on alcohol, at initial application and redetermination of eligibility using a standardized substance abuse screening test approved by the Department of Health and Hospitals, Office for Addictive Disorders (OAD). An illegal drug is a controlled substance as defined in R.S. 40:961, Controlled Dangerous Substance, et seq.

a. When the screening process indicates that there is a reason to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, or when there is other evidence that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, the

recipient will be referred to OAD to undergo appropriate substance abuse assessment which may include urine testing. The referral will include a copy of the screening form, a copy of the Release of Information Form, and a photograph of the individual for identification purposes.

b. Additionally, if at any time OFS has reasonable cause to suspect that a recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, based on direct observation or if OFS judges to have reliable information of use or dependency on illegal drugs or abuse of or dependency on alcohol, received from a reliable source, the caseworker will refer the recipient to OAD to undergo appropriate substance abuse assessment which may include urine testing. All such referrals will require prior approval by the supervisor of the caseworker.

c. OAD will advise OFS of the results of the formal assessment. If the formal assessment determines that the recipient is not using or dependent on illegal drugs or not abusing or dependent on alcohol, no further action will be taken unless subsequent screening or other evidence indicates a reasonable suspicion of substance abuse. If the formal assessment determines that the recipient is using or dependent on illegal drugs or abusing or dependent on alcohol, OAD will determine the extent of the problem and recommend the most appropriate and cost-effective method of education and rehabilitation. The education or rehabilitation plan will be provided by OAD or by a contract provider and may include additional testing and monitoring. The OAD assessment will include a determination of the recipient's ability to participate in activities outside of the rehabilitation program.

3. If inpatient treatment is recommended by OAD and the recipient is unable to arrange for the temporary care of dependent children, OFS and/or OAD will coordinate with the Office of Community Services to arrange for the care of such children.

4. Failure to Cooperate. Failure or refusal of a recipient to participate in substance abuse screening, testing, or participation in the education and rehabilitation program, without good cause, will result in ineligibility of the recipient until he/she cooperates. Cooperation is defined as participating in the component in which the recipient previously failed to cooperate. This includes substance abuse screening, substance abuse testing, or satisfactory participation for two weeks in an education and rehabilitation program.

5. If after completion of education and rehabilitation, the recipient is subsequently determined to use or be dependent on illegal drugs or abuse or be dependent on alcohol, the recipient will be ineligible for KCSP benefits until such time that OAD determines that the individual has successfully completed the recommended education and rehabilitation program and is substance abuse free.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:

Gwendolyn P. Hamilton
Secretary

0205#053

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2002 Spring Inshore Shrimp Season

In accordance with the emergency provisions of R.S. 49:953.B and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2002 Spring Inshore Shrimp Season to open as follows:

Zone 1, that portion of Louisiana's inshore waters from the Mississippi state line to the eastern shore of South Pass of the Mississippi River, to open at 6 a.m., May 27, 2002, except the open waters of Breton and Chandeleur Sounds as described in the menhaden rule (LAC 76:VII.307.D) which shall open at 6 a.m., May 16, 2002; and

Zone 2, that portion of Louisiana's inshore waters from the eastern shore of South Pass of the Mississippi River westward to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, as well as that portion of the State's Territorial Waters south of the Inside/Outside Shrimp Line as described in R.S. 56:495 from the Atchafalaya River Channel at Eugene Island as delineated by the River Channel buoy line to Freshwater Bayou, all to open at 6 a.m., May 16, 2002; and

Zone 3, that portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Texas state line, to open at 6 a.m., May 27, 2002.

The commission also hereby grants to the secretary of the Department of Wildlife and Fisheries the authority to close any portion of the state's inshore waters to protect small white shrimp if biological and technical data indicates the need to do so, or enforcement problems develop.

Thomas M. Gattle, Jr.
Chairman

0205#036

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Deer and Elk Importation (LAC 76:V.117)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of LSA Const. Art. IX Sec. 7; LSA 56:6(10), (13) and (15) and 20 and 171 et seq., the Wildlife and Fisheries Commission (LWFC) hereby adopts the following Emergency Rule. This action supercedes LAC 76:V.117.

This Rule is effective May 2, 2002 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The reasons for the promulgation of this Declaration of Emergency are as follows.

Chronic Wasting Disease (CWD) is a neurodegenerative disease that has been found in captive and free-ranging deer and elk herds in eight states. Bovine tuberculosis (TB) occurs in captive and free ranging deer in Michigan. In 1998, the LWFC prohibited importation of white-tailed deer from Wyoming and Colorado, states with endemic CWD in certain populations of free-ranging deer. Importation from Michigan was also prohibited due to the occurrence of TB. Since that time, cases of CWD have been found in at least 21 captive deer or elk herds in Colorado, South Dakota, Oklahoma, Nebraska, Montana, Kansas, and the Canadian province of Saskatchewan. In addition to the CWD cases in captive deer and elk, and those in the CWD endemic area of southeastern Wyoming and north-central Colorado, the disease has been found in free-ranging deer in Nebraska, South Dakota, and Wisconsin. The cases in Wisconsin, found in March 2002, are the first east of the Mississippi River. Recently, CWD has been found in free-ranging deer in western Colorado. These are the first CWD cases found outside of the endemic area in the northeastern part of that state. Several of the CWD outbreaks in wild deer appear to be associated with captive elk herds.

CWD is a poorly understood disease related to other transmissible spongiform encephalopathies such as Bovine Spongiform Encephalopathy (Mad Cow Disease) of cattle, Creutzfeld-Jakob Disease of humans, and scrapie of sheep. Mutant proteins, called prions, are believed to be the infectious agent responsible for CWD. Current information suggests that the disease is limited to deer and elk, and is not naturally transmitted to livestock or humans. The means by which CWD is transmitted is not known, but it is probably transmitted from animal to animal. Maternal transmission from infected does to fawns is also thought to occur. There is no cure or treatment for CWD, and it is always fatal.

CWD is a particularly difficult disease to detect and control. The incubation period (time from which the animal is infected until it exhibits symptoms) is at least 18 months and may be as long as 3-5 years. Until symptoms appear, infected animals appear normal. Symptoms of CWD include weight loss, excessive salivation, depression, dehydration, general weakness, and behavioral changes. There is no live animal test for CWD. Examination of brain tissue from dead animals is the only means of positive diagnosis. The agent that causes CWD is extremely resistant to traditional disinfection techniques. It is not known how long the infectious agent can persist in the soil or other media, but some evidence indicates that the infectious agent can persist for an extended period of time.

Interstate and intrastate movement of infected captive deer and elk can quickly spread CWD beyond those areas where it already occurs. Strong circumstantial evidence suggests that CWD outbreaks in free ranging deer in Colorado, Nebraska, and South Dakota are related to captive elk enclosures.

Trade in captive deer and elk lend itself to the spread of CWD. Deer and elk are frequently transferred from one owner to another. These movements are often from state to state. For example, at least 109 elk movements which occurred during 1982-97, were indirectly or directly traced back to a single CWD positive captive elk herd in Montana.

Elk from this herd were sent to at least 12 states and 2 Canadian provinces. Elk from a CWD infected Colorado herd were sent to 19 states and introduced into 45 herds. A CWD outbreak in Saskatchewan, Canada that affected 39 elk herds was traced back to a single elk from South Dakota. Exotic animal auctions are another source of concern. At these auctions, a large number of animals come into contact with each other and then are dispersed across the United States. Accurate and verifiable records of where animals have been, and what animals they have been in contact with, are seldom available. In some states, including Louisiana, captive deer and elk may be introduced into large enclosures containing wild deer. Once introduced into large, often heavily vegetated enclosures, the animals usually cannot be monitored or re-captured. Enclosures are not escape-proof and escapes or fence to fence contact with free ranging wild deer can be expected.

The Louisiana Department of Agriculture and Forestry has licensed approximately 120 alternative livestock farms that average about 12 acres in size and contain an average of about 10-20 deer each. In addition, 15 supplemented hunting preserves that are at least 300 acres each are licensed by LDAF. These supplemented hunting preserve enclosures may contain both released deer and native wild deer. The Louisiana Department of Wildlife and Fisheries licenses about 115 non-commercial game breeders that possess deer. The deer and elk farming industry in Louisiana is small, and as a whole, not highly dependent on imported deer. In 2000, the LDAF issued only 10 importation permits involving 57 deer.

In contrast, recreation associated with wild deer and wild deer hunting has significant economic impact in Louisiana. In 2001, there were approximately 172,000 licensed deer hunters in Louisiana. There were also an undetermined number that were not required to have a license (under age 16 or over age 60). The *1996 National Survey of Fishing, Hunting and Wildlife Associated Recreation* reports that deer hunting in Louisiana has an economic impact of \$603,909,581 per year and provides over 8,500 jobs. Many landowners receive income from land leased for deer hunting. Recreation has been the driving force maintaining rural and timberland real estate values during the last several years.

The cost of a CWD outbreak in Louisiana could be substantial. State government could incur considerable costs in order to effectively contain and monitor a CWD outbreak. By way of example, the Wisconsin Department of Natural Resources spent approximately \$250,000 for monitoring and containment during the first 49 days of the outbreak in that state. The Colorado Division of Wildlife has spent about \$1,000,000 to date for CWD monitoring and containment. They are requesting an additional \$2,300,000 in FY 2002/03 to address CWD outbreaks in their state.

In addition to the cost to government, the private sector would be affected by a CWD outbreak in Louisiana. Interest in deer hunting would likely decline if significantly lower deer populations result. Additionally, hunter concerns regarding contact with, or consumption of, infected animals could also reduce deer hunting activity. Lower hunting lease values and fewer hunting related retail purchases would therefore be likely. In Wisconsin, Department of Natural Resources personnel report that a significant decline in land

value in the CWD affected area has already occurred. A significant reduction in deer hunting activity could also have deleterious effects on agriculture, horticulture, and forestry resulting from increased deer depredation of crops, ornamentals, and trees if the reduction in hunting mortality is not offset by CWD mortality.

The primary means of containing a CWD outbreak involves depopulating an area surrounding the infection site(s). By way of example, Wisconsin Department of Natural Resources personnel and landowners are killing 500 deer in a 415 square mile area for testing. If more infected deer are found, a depopulation program will likely be instituted. In Colorado, the Division of Wildlife is killing as many deer and elk as possible in a 5-mile radius of the CWD outbreak in western Colorado. These types of depopulation efforts are offensive to wildlife agencies, hunters, and other citizens. However, this is the only available means to control CWD outbreaks in wild free-ranging deer.

In recognition of the CWD threat, and lack of a coordinated eradication/control effort, the United States Department of Agriculture enacted a declaration of emergency in September 2001 to authorize funding of a CWD indemnification and eradication program in the United States. Prohibitions on the importation of deer and elk have been instituted in a number of states. Texas and Florida recently suspended importation of deer and elk. Other states, including Wisconsin and Utah have developed rules that require that imported deer and elk must originate from herds that have been certified free of CWD for at least 5 years. However, because few, if any, herds in the United States can meet that standard, this rule is effectively an importation prohibition.

The lack of a live animal test to detect CWD, an incubation period measured in years, and insufficient animal records make it extremely difficult to prevent the introduction of CWD infected deer and elk into Louisiana under the current importation rules. The recent deer and elk importation ban in Texas, one of the largest buyers of deer, may result in "dumping" of deer into Louisiana and other states. Introduction of CWD into Louisiana could have wide-ranging and significant negative impacts on the state's wild deer resources and economy. For these reasons and those outlined above, the Louisiana Wildlife and Fisheries Commission believes that an immediate prohibition on the importation of deer and elk into Louisiana is warranted. This prohibition will remain in effect until no longer necessary.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§117. Deer and Elk Importation

A. Definitions

White-Tailed Deer Any animal of the species *Odocoileus virginianus*.

Mule Deer or Black-Tailed Deer Any animal of the species *Odocoileus hemionus*.

Elk or Red Deer Any animal of the species *Cervus elaphus*.

B. No person shall import, transport or cause to be imported or transported live white-tailed deer, mule deer, or black-tailed deer (hereinafter "deer"), into or through the state of Louisiana. No person shall import, transport or cause

to be imported or transported, live elk or red deer (hereinafter "elk") into or through Louisiana in violation of any Imposition of Quarantine by the Louisiana Livestock Sanitary Board. Any person transporting deer or elk between licensed facilities within the state must notify the Department of Wildlife and Fisheries and provide information as required by the Department prior to departure from the source facility and again upon arrival at the destination facility. A transport identification number will be issued upon providing the required information prior to departure. Transport of deer or elk between licensed facilities without a valid transport identification number is prohibited. Notification must be made to the Enforcement Division at 1800-442-2511. All deer or elk imported or transported into or through this state in violation of the provisions of this ban shall be seized and disposed of in accordance with LWFC and Department of Wildlife and Fisheries rules and regulations.

C. This Rule shall be in effect until May 30, 2005.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:1140 (June 1998), repromulgated LR 24:1325 (July 1998), amended LR 28:

Thomas M. Gattle, Jr.
Chairman

0205#041

DECLARATION OF EMERGENCY

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

Disposal of Illegal Live Deer and Elk (LAC 76:V.121)

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

This Rule is effective May 2, 2002 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

The reasons for promulgation of this Declaration of Emergency are as follows.

The disposition of confiscated live deer and elk is a problem with significant biological and sociological ramifications. Verification of the place of origin, history of contacts with other animals, and the route of translocation for illegally possessed animals is difficult to obtain. Improper handling of these animals can have serious consequences for Louisiana's native deer herd and legally held captive deer and elk.

LDWF's Nuisance Deer Complaint records indicate that 28 percent of all complaints in 2000 were problems concerning illegally possessed deerCpredominantly fawns. The incidence of deer and elk/red deer confiscation (possibly in large numbers) can be expected to increase with the

implementation of a state ban on their importation into or transport through Louisiana.

Currently, the Nuisance Deer Management Policy states that confiscated deer will be "disposed of in the most appropriate fashion." Typically adult deer are sent to a willing LDWF-authorized game breeder (if one can be found). "Orphaned" fawns are taken to LDWF-permitted rehabilitators and released back into the wild at the appropriate time. Injured or sick animals with a prognosis for low survivability are euthanized by LDWF according to AVMA guidelines. At the time this Nuisance Deer Policy was developed, social issues may have to some degree, overridden biological concerns. However, current conditions dictate that biological issues take precedent.

The proliferation of deer farming in Louisiana and nationwide has resulted in an increase in interstate and intrastate movement of pen-raised deer and elk. This development in conjunction with the emergence of serious diseases such as Chronic Wasting Disease (CWD) and Bovine Tuberculosis (TB), have focused attention on the proper disposition of deer and elk with uncertain histories.

Chronic Wasting Disease (CWD) is a neurodegenerative disease that has been found in captive and free-ranging deer and elk herds in eight states. Bovine tuberculosis occurs in captive and free ranging deer in Michigan. In 1998, the LWFC prohibited importation of white-tailed deer from Wyoming and Colorado, states with endemic CWD in certain populations of free-ranging deer. Importation from Michigan was also prohibited due to the occurrence of TB. Since that time, cases of CWD have been found in at least 21 captive deer or elk herds in Colorado, South Dakota, Oklahoma, Nebraska, Montana, Kansas, and the Canadian province of Saskatchewan. In addition to the CWD cases in captive deer and elk, and those in the CWD endemic area of southeastern Wyoming and north-central Colorado, the disease has been found in free-ranging deer in Nebraska, South Dakota, and Wisconsin. The cases in Wisconsin, found in March 2002, are the first east of the Mississippi River. Recently, CWD has been found in free-ranging deer in western Colorado. These are the first CWD cases found outside of the endemic area in the northeastern part of that state. Some of the CWD outbreaks in wild deer and elk appear to be associated with outbreaks in captive deer and elk herds.

CWD is a poorly understood disease related to other transmissible spongiform encephalopathies such as Bovine Spongiform Encephalopathy (Mad Cow Disease) of cattle, Creutzfeld-Jakob Disease of humans, and scrapie of sheep. Mutant proteins, called prions, are believed to be the infectious agent responsible for CWD. Current information suggests that the disease is limited to deer and elk, and is not naturally transmitted to livestock or humans. The means by which CWD is transmitted is not known, but it is probably transmitted from animal to animal. Maternal transmission from infected does to fawns is also thought to occur. There is no cure or treatment for CWD, and it is always fatal.

CWD is a particularly difficult disease to detect and control. The incubation period (time from which the animal

is infected until it exhibits symptoms) is at least 18 months and may be as long as 35 years. Until symptoms appear, infected animals appear normal. Symptoms of CWD include weight loss, excessive salivation, depression, dehydration, general weakness, and behavioral changes. There is no live animal test for CWD. Examination of brain tissue from dead animals is the only means of positive diagnosis.

The agent that causes CWD is extremely resistant to traditional disinfection techniques. It is not known how long the infectious agent can persist in the soil or other media, but some evidence indicates that the infectious agent can persist for an extended period of time. For example, after CWD deer were removed from an enclosure in Colorado, the topsoil was plowed under, the enclosure was disinfected, and no deer were reintroduced for one year. When deer were returned to that enclosure one year later, they contracted CWD. Containment of confiscated deer or elk that are infected with CWD within an enclosure or other structure, could expose animals subsequently held in the enclosure to CWD, and thus spread the disease long after the infected animals have been removed.

Interstate and intrastate movement of infected captive deer and elk can quickly spread CWD beyond those areas where it already occurs. Strong circumstantial evidence suggests that CWD outbreaks in free ranging deer in Colorado, Nebraska, and South Dakota are related to captive elk enclosures.

Trade in captive deer and elk lend itself to the spread of CWD. Deer and elk are frequently transferred from one owner to another. These movements are often from state to state. For example, at least 109 elk movements which occurred during 1982-97, were indirectly or directly traced back to a single CWD positive captive elk herd in Montana. Elk from this herd were sent to at least 12 states and 2 Canadian provinces. Elk from a CWD infected Colorado herd were sent to 19 states and introduced into 45 herds. A CWD outbreak in Saskatchewan, Canada that affected 39 elk herds was traced back to a single elk from South Dakota. Exotic animal auctions are another source of concern. At these auctions, a large number of animals come into contact with each other and then are dispersed across the United States. Accurate and verifiable records of where animals have been, and what other animals they have been in contact with, are seldom available.

The cost of a CWD outbreak in Louisiana could be substantial. State government could incur considerable costs in order to effectively contain and monitor a CWD outbreak. By way of example, the Wisconsin Department of Natural Resources spent approximately \$250,000 for monitoring and containment during the first 49 days of the outbreak in that state. They will spend an additional \$1,900,000 next year and will hire 12 new employees to address the CWD outbreak. The Colorado Division of Wildlife has spent about \$1,000,000 to date for CWD monitoring and containment.

In addition to the cost to government, the private sector would be affected by a CWD outbreak in Louisiana. Interest in deer hunting would likely decline if significantly lower

deer populations result. Additionally, hunter concerns regarding contact with, or consumption of, infected animals could also reduce deer hunting activity. Lower hunting lease values and fewer hunting related retail purchases would therefore be likely. By way of example, Wisconsin Department of Natural Resources personnel report that a significant decline in land value in the CWD affected area has already occurred. A significant reduction in deer hunting activity could also have deleterious effects on agriculture, horticulture, and forestry resulting from increased deer depredation of crops, ornamentals, and trees if the reduction in hunting mortality is not offset by CWD mortality.

The primary means of containing a CWD outbreak involves depopulating an area surrounding the infection site(s). In Wisconsin Department of Natural Resources personnel and landowners are killing 500 deer in a 415 square mile area for testing. If more infected deer are found, a depopulation program will likely be instituted. In Colorado, the Division of Wildlife is killing as many deer and elk as possible in a 5-mile radius of the CWD outbreak in western Colorado. These types of depopulation efforts are offensive to wildlife agencies, hunters, and other citizens. However, this is the only available means to control CWD outbreaks in wild free-ranging deer.

In recognition of the CWD threat, and lack of a coordinated eradication/control effort, the United States Department of Agriculture enacted a declaration of emergency in September 2001 to authorize funding of a CWD indemnification and eradication program in the United States. Prohibitions or limitations on the importation of deer and elk have been instituted in a number of states. Texas and Florida recently suspended importation of deer and elk. The state of Texas will euthanize and incinerate the carcasses of illegally imported deer.

Genetic pollution is another concern which arises should confiscated deer be released into the wild. Genetic pollution results from the introduction of non-native deer to Louisiana. Native deer are tailored (genetically) by nature for survival in Louisiana's varied habitats. Hybridization could have a detrimental and irreversible impact on Louisiana's deer resource. Diminished resistance to parasites/diseases and altered breeding ecology are two major concerns that could significantly reduce the fitness (productivity) of local deer.

Experience and research has shown that northern deer are inferior at surviving in southern environments. Northern deer are precisely engineered by nature to fit their northern environment. They are larger and have heavier winter coats to cope with extreme cold and have an immune system that has never been exposed to southern diseases and parasites. Conversely, southern deer are smaller by design to better cope with heat and humidity and their immune systems are genetically programmed to fight specific diseases and parasites. Recent research has shown that deer from other regions do not do well in Louisiana.

A serious outbreak of hemorrhagic disease (EHDV-2) at the Mississippi State University research pens in 1994 killed 36 of 114 deer originating from seven different states. The differences in mortality rates between the genetic groupings

were significant with the probability of mortality increasing as the proportion of northern genes increased. Northern deer have very little resistance to EHD.

After 2 growing seasons in Louisiana, antler development on 24 translocated Wisconsin bucks was average or below average when compared to native bucks of similar age. At 2.5 years old, Wisconsin bucks averaged 5.3 points while native deer averaged nearly 7.5 points. Wisconsin deer did not develop the superior antlers they were genetically capable of when grown in Louisiana.

Humane treatment of confiscated deer is an important consideration to the LWFC, the LDWF, and the public, and toward that end confiscated deer will be handled and euthanized in the most humane manner possible. Of even more importance, however, is the long-term health and vitality of the Louisiana's wild deer resources.

The lack of a live animal test to detect CWD, an incubation period measured in years, insufficient animal records, and possible long-term CWD contamination of facilities, make it extremely difficult to prevent the introduction of CWD into Louisiana if imported deer and elk are integrated into existing captive deer herds or released into the wild. The recent deer and elk importation ban in Texas, formerly one of the largest buyers of deer, may result in "dumping" of deer into Louisiana and other states. Introduction of CWD into Louisiana could have wide-ranging and significant negative impacts on the state's wild deer resources and economy. Genetic pollution can have negative impacts on local native deer populations should non-native deer be released into the wild. For these reasons and those outlined above, the Louisiana Wildlife and Fisheries Commission believes euthanasia of all deer and elk imported contrary to LWFC regulations and state law is warranted. Furthermore, the LWFC believes that the Louisiana Department of Wildlife and Fisheries should euthanize illegally obtained deer with origins within the state if the Department believes such action is prudent and necessary based upon considerations including the certainty of origin, confinement history, and age.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§121. Disposal of Illegal Live Deer and Elk

A. Definitions

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

Mule Deer or *Black-Tailed Deer*—any animal of the species *Odocoileus hemionus*.

Elk or *Red Deer*—any animal of the species *Cervus elaphus*.

B. White-tailed deer, mule deer, black-tailed deer, elk, or red deer imported into Louisiana in violation of Louisiana Wildlife and Fisheries Commission (LWFC) rules or state statutes shall be euthanized by the Louisiana Department of Wildlife and Fisheries (LDWF), or its designee, in a manner conforming to the *2000 Report of the AVMA Panel on Euthanasia*. At the discretion of the LDWF, white-tailed deer

originating from within Louisiana and possessed in violation of LWFC rules or state statutes, may be euthanized in a manner conforming to the *2000 Report of the AVMA Panel on Euthanasia*, or placed with a licensed game breeder in accordance with LDWF guidelines. Certainty of origin, confinement history, and age will be among the factors considered by LDWF in making a determination regarding disposition of white-tailed deer originating from within Louisiana. White-tailed deer placed with licensed game breeders shall remain in confinement for their entire lives and shall not be released into the wild.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S. 56:6(10), (13) and (15), R.S. 56:20, R.S. 56:112, R.S. 56:116.1 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:

Thomas M. Gattle, Jr.
Chairman

0205#042