

Rules

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Correction to 2001 IBR of 40 CFR Parts 60, 61, and 63
(LAC 33:III.3003, 5116, 5122, and 5311)(AQ229*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.3003, 5116, 5122, and 5311 (Log #AQ229*).

This Rule is identical to federal regulations found in 40 CFR 60, 61, and 63, July 1, 2001, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. No fiscal or economic impact will result from the Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953.F(3) and (4).

This rulemaking corrects inadvertent errors made in earlier rulemaking to update the incorporation by reference (IBR) of 40 CFR Parts 60, 61, and 63. Earlier IBR rulemaking did not list new additions to the *Code of Federal Regulations*, July 1, 2001. Additional changes are included to follow the IBR rulemaking procedure. The basis and rationale for this Rule are to mirror the federal regulations, with the exception of 40 CFR 63, Subpart S.

This Rule meets an exception listed in R.S. 30:2019.D(2) and R.S. 49:953.G(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

A printing error that occurred in LAC 33:III.3003.B.5 of the Notice of Intent, which was published on page 1822 of the *Louisiana Register* on August 20, 2002, is being corrected in this final Rule publication.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference (IBR)

§3003. IBR 40 Code of Federal Regulations (CFR) Part 60

A. Except as modified in this Section, regulations at 40 CFR Part 60, as revised July 1, 2001, are hereby incorporated by reference as they apply to the state of Louisiana.

Table 1C Repealed.

Table 1.A.C Repealed.

B. - B.4. ...

5. The department's emission guideline plan, required by the Clean Air Act (CAA), Section 111(d), for Hospital/Medical/Infectious Waste Incinerators includes the following CFR citations: 40 CFR 60.30, 60.30(e), 60.31(e),

60.32(e), 60.33(e), 60.35(e), 60.36(e), 60.37(e), 60.38(e), and 60.39(e). Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.34(e), the department accepts accreditation approved by other states complying with 40 CFR 60.34(e).

6. The department's emission guideline plan, required by the CAA, Section 111(d), for Commercial and Industrial Solid Waste Incineration (CISWI) Units includes 40 CFR 60.2575-60.2630, 60.2640-60.2875, and Tables 1-5. Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.2635, the department shall accept accreditation approved by other states complying with 40 CFR 60.2635.

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20242, or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460 (November 2000), LR 26:2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR

Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. - Table. ...

B. Modifications or Exceptions. The following modifications or exceptions are made to the incorporated federal standards.

1. 40 CFR Part 61, Subpart A, Section 61.04(b)(T) is modified to read as follows: Louisiana Department of Environmental Quality, Office of Environmental Services, Permits Division.

2. Whenever the referenced regulations (i.e., 40 CFR Part 61) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 61) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Permits Division where the state is

designated authority by EPA as "the Administrator" or shall be provided to the Office of Environmental Services, Permits Division and EPA where EPA retains authority as "the Administrator."

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), LR 25:1464 (August 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002).

**Subchapter C. Incorporation by Reference of 40 CFR
Part 63 (National Emission Standards for
Hazardous Air Pollutants for Source
Categories) as it Applies to Major Sources**

**§5122. Incorporation by Reference of 40 CFR Part 63
(National Emission Standards for Hazardous Air
Pollutants for Source Categories) as it Applies to
Major Sources**

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories published in the *Code of Federal Regulations* at 40 CFR Part 63, dated July 1, 2001, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference is 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*, 57 FR 16595-16611.

Note: Table is being deleted

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

C. Modifications or Exceptions. The following modifications or exceptions are made to the incorporated federal standards.

1. Whenever the referenced regulations (i.e., 40 CFR Part 63) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 63) to be provided to "the Administrator" shall be provided to the Office of Louisiana Register Vol. 28, No. 10 October 20, 2002

Environmental Services, Permits Division where the state is designated authority by EPA as "the Administrator" or shall be provided to the Office of Environmental Services, Permits Division and EPA where EPA retains authority as "the Administrator."

2. In Section 63.440(d)(1) of 40 CFR 63, Subpart S, National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry, the requirement is modified to read, "Each kraft pulping system shall achieve compliance with the pulping system provisions of Section 63.443 for the equipment listed in Section 63.443(a)(1) (ii)-(v), as expeditiously as practicable, but in no event later than December 20, 2004, and the owners and operators shall establish dates, update dates, and report the dates for the milestones specified in Section 63.455(b)."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999), LR 25:1798 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002).

**Chapter 53. Area Sources of Toxic Air Pollutants
Subchapter B. Incorporation by Reference of 40 CFR
Part 63 (National Emission Standards for
Hazardous Air Pollutants for Source
Categories) as it Applies to Area Sources**

**§5311. Incorporation by Reference of 40 CFR Part 63
(National Emission Standards for Hazardous Air
Pollutants for Source Categories) as it Applies to
Area Sources**

A. - Table. ...

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.access.gpo.gov/nara/cfr/index.html, the Department of Environmental Quality, Office of Environmental Services, Permits Division, or a public library.

C. Modifications or Exceptions. Whenever the referenced regulations (i.e., 40 CFR Part 63) provide authority to "the Administrator," such authority, in accordance with these regulations, shall be exercised by the administrative authority or his designee, notwithstanding any authority exercised by the U.S. Environmental Protection Agency (EPA). Reports, notices, or other documentation required by the referenced regulations (i.e., 40 CFR Part 63) to be provided to "the Administrator" shall be provided to the Office of Environmental Services, Permits Division where the state is designated authority by EPA as "the Administrator" or shall be provided to the Office of Environmental Services, Permits Division and EPA where EPA retains authority as "the Administrator."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), LR 25:1464 (August 1999), amended by the Office of

Environmental Assessment, Environmental Planning Division, LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2181 (October 2002).

James H. Brent, Ph.D.
Assistant Secretary

0210#066

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Corrections to Organizational Citations
(LAC 33:V.4201, 4205, 4211, and 4241)(HW082)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste regulations, LAC 33:V.4201, 4205, 4211, and 4241 (Log #HW082).

This Rule makes a minor correction for clarification and corrects errors in the use of "administrative authority" by replacing the term with the correct office and division for submittals or notification requirements. This action is being taken to encourage and assist the regulated entities in the proper submittal of information and notification to the department. The basis and rationale for this rule are to provide consistency in the regulations with regards to information submittal and notification to the department.

This Rule meets an exception listed in R.S. 30:2019.D.(2) and R.S. 49:953.G.(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

**Subpart 1. Department of Environmental
QualityC Hazardous Waste**

**Chapter 42. Conditional Exemption for Low-Level
Mixed Waste Storage and Disposal**

§4201. What Definitions Apply to this Chapter?

A. This Chapter uses the following special definitions.
* * *

We or UsAdministrative authority, as defined in LAC 33:V.109. Within this Chapter, the administrative authority is the Office of Environmental Services, Permits Division, unless otherwise indicated.
* * *

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

HISTORICAL NOTE: Promulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1004 (May 2002), amended LR 28:2181 (October 2002).

**§4205. What Wastes are Eligible for the Storage and
Treatment Conditional Exemption?**

A. LLMW, defined in LAC 33:V.4201, is eligible for this conditional exemption if it is generated and managed by you under a single department, NRC, or other NRC agreement state license. (Mixed waste generated at a facility with a

different license number and shipped to your facility for storage or treatment requires a permit and is ineligible for this exemption. In addition, NARM waste is ineligible for this exemption.)

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

HISTORICAL NOTE: Promulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1005 (May 2002), amended LR 28:2181 (October 2002).

**§4211. How Could You Lose the Conditional Exemption
for Your LLMW and What Action Must You
Take?**

A. -A.1.c. ...

2. If the failure to meet any of the conditions may endanger human health or the environment, you must also immediately notify the Office of Environmental Compliance by telephone or by e-mail within 24 hours after learning of the discharge. Notification should be made to the Office of Environmental Compliance by telephone at (225) 763-3908 during office hours; (225) 342-1234 after hours, weekends, and holidays; or by e-mail utilizing the Incident Report Form and procedures found at www.deq.state.la.us/surveillance and followed up with a written notification within five days. Failures that may endanger human health or the environment include, but are not limited to, discharge of a CERCLA reportable quantity or other leaking or exploding tanks or containers or detection of radionuclides above background or hazardous constituents in the leachate collection system of a storage area. If the failure may endanger human health or the environment, you must follow the provisions of your emergency plan.

B. ...

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

HISTORICAL NOTE: Promulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1006 (May 2002), amended LR 28:2181 (October 2002).

**§4241. How Could You Lose the Transportation and
Disposal Conditional Exemption for Your Waste
and What Actions Must You Take?**

A. Any waste will automatically lose the transportation and disposal exemption if you fail to manage it in accordance with all of the conditions specified in LAC 33:V.4225.

1. When you fail to meet any of the conditions specified in LAC 33:V.4225 for any of your wastes, you must report to the Office of Environmental Compliance, Surveillance Division, in writing by certified delivery, within 30 days of learning of the failure. Your report must be signed by your authorized representative certifying that the information provided is true, accurate, and complete. This report must include:

a. - c. ...

2. If the failure to meet any of the conditions may endanger human health or the environment, you must also immediately notify the Office of Environmental Compliance by telephone or by e-mail within 24 hours after learning of the discharge. Notification should be made to the Office of Environmental Compliance by telephone at (225) 763-3908 during office hours; (225) 342-1234 after hours, weekends, and holidays; or by e-mail utilizing the Incident Report Form

and procedures found at www.deq.state.la.us/surveillance then followed up with a written notification within five days.

B. ...

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

HISTORICAL NOTE: Promulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1008 (May 2002), amended LR 28:2181 (October 2002).

James H. Brent
Assistant Secretary

0210#080

RULE

Board of Elementary and Secondary Education

Bulletin 741C Louisiana Handbook for School Administrators C Computer/Technology Education (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended Bulletin 741, *Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). BESE recently adopted new Louisiana K-12 Technology Standards, including those for Computer Education courses at the secondary level. As a result, several new course titles and descriptions for secondary courses were developed. These new courses reflect the increasing role of technology in our society and the need to have students prepared to use and adapt the technology to locate information, create quality products, and to solve problems. The broadening of the numbers of teachers who may teach these elective courses will increase the likelihood that schools will offer a variety of the course offerings as part of a computer education experience. This change in policy will allow teachers holding secondary certification in any area, with demonstrated technology proficiencies, to teach certain secondary level courses in the computer education course of study. These courses include Web Mastering, Computer Systems and Networking, among other delineated courses. Computer Science certification is maintained for Computer Science I or II.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans**

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.A.(10), (11), and (15); R.S. 17:7.(5), (7), and (11); R.S. 17:10 and 11; R.S. 17:22.(2) and (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education in LR 27:694 and 695 (May 2001), LR 27:815 (June 2001), LR 28:2182 (October 2002).

Computer/Technology Education

2.105.02 Computer/technology education course offerings shall be as follows:

Course Title	Unit(s)
Computer Applications	1
Computer Architecture	1
Computer Science I	1
Computer Science II	1
Computer Systems and Networking I	1
Computer Systems and Networking II	1
Computer/Technology Literacy	1/2
Desktop Publishing	1/2
Digital Graphics and Animation	1/2
Multimedia Productions	1
Web Mastering	1/2
Independent Study in Technology Application	1

In order to teach Computer Science I or II, Computer Science certification is required. Teachers who are identified to teach one of the other Computer Education course offerings at the high school level must hold a valid Louisiana secondary certificate in any area and demonstrate sufficient technology proficiencies to teach the course. The district and school shall ensure that teachers have appropriated and demonstrated technology knowledge and skills to teach the courses.

Weegie Peabody
Executive Director

0210#029

RULE

**Office of the Governor
Division of Administration
Racing Commission**

Substance Abuse and Drug-Free Workplace Program (LAC 4:VII.2101-2121)

Editor's Note: The following Sections are being repromulgated. These Sections are being moved from Title 13 to Title 4, as the Racing Commission has been moved from the Department of Economic Development to the Office of the Governor.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Louisiana State Racing Commission has repromulgated Rules concerning the Substance Abuse and Drug-Free Workplace Program. The Louisiana State Racing Commission has been relocated from the Office of Economic Development to the Office of the Governor.

The table below indicates the Substance Abuse and Drug-Free Workplace Program codification change, from LAC 13:IX.101-121 to LAC 4:VII.2101-2121.

Previous Section Number	Current Section Number
§101	§2101
§103	§2103
§105	§2105
§107	§2107
§109	§2109
§111	§2111
§113	§2113
§115	§2115
§117	§2117
§119	§2119
§121	§2121

**Title 4
ADMINISTRATION**

Part VII. Governor's Office

Chapter 21. Racing Commission

**Subchapter A. Substance Abuse and Drug-Free
Workplace Program**

§2101. Philosophy

A. The Louisiana State Racing Commission (LRC) is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this state. To accomplish this, the LRC hereby adopts these Substance Abuse and Drug-Free Workplace rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of the LRC and its employees.

B. The LRC's philosophy is consistent with the state of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the Governor of the state of Louisiana recently issued Executive Order 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with R.S. 49:1001, et seq. The LRC fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2183 (October 2002).

§2103. Applicability

A. These rules apply to domicile employees, field auditors and appointees of the LRC, as well as potential employees and appointees to those positions.

B. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees/appointees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who incumbent safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within the LRC is contained within §2121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2183 (October 2002).

§2105. Requirements

A. To maintain a safe and productive work environment, all LRC employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;

2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;

3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

B. The LRC prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in LRC business, on or off LRC/state premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a state vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood.

2.a. Illegal or unauthorized drugs include:

i. any drug which is not legally obtainable;

ii. any drug which is legally obtainable, but has been illegally obtained;

iii. prescription drugs not being used in accordance with the prescription; or

iv. any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in schedule I, II, III, IV and V of R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2183 (October 2002).

§2107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of the LRC. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment/appointment. Additionally, applicants for safety-sensitive positions listed in §2121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where

there is a reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

- a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;
- b. the accident meets the criteria of §2107.A.2.a and results in or causes the release of hazardous waste as defined by R.S. 30:2173(2) or hazardous materials as defined by R.S. 32:1502(5); or
- c. the accident results in a fatality or serious bodily injury.

NOTE: When post-accident/incident testing is ordered, an LRC representative shall transport the individual being tested to and from the testing site. Under no circumstances should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §2121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc. to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §2121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

NOTE: When reasonable suspicion testing is ordered, an LRC representative shall transport the individual being tested to and from the testing site. Under no circumstances should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:34 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2183 (October 2002).

§2109. Drug Testing Procedures

A. Drug testing pursuant to this policy shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

- a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

- b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

- c. when the last urine specimen provided by the individual was verified by the medical review officer as adulterated; or

- d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

NOTE: In all instances in which direct observation is deemed appropriate, the designated LRC representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the LRC representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with R.S. 49:1006.D, with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be

analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to the LRC's qualified medical review officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to the LRC by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:35 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2184 (October 2002).

§2111. Alcohol Testing Procedures

A. Evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration will be used by certified breath alcohol technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath-screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within 20 minutes, but not less than 15 minutes of completion of the screening test. If the confirmatory test

indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood, the results will be reported as positive to the LRC's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:35 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2185 (October 2002).

§2113. Enforcement

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with the LRC's mission. While the LRC's position is firm, the LRC will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least 30 calendar days. For any such period, the first ten workdays will be a suspension, without pay. For the remaining 20 days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this 30-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
2. refusal to submit to a drug or alcohol test;
3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;
4. submission of an adulterated or substitute sample for testing;
5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or

unauthorized substance while on duty, in a state vehicle or on LRC/state premises; and

6. operating a state vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2185 (October 2002).

§2115. Confidentiality/Employee Rights

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

B. In compliance with R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by the LRC, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. The LRC has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this policy, discovered in/on LRC/state property, or upon the person of an LRC employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on LRC/state property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2186 (October 2002).

§2117. Employee Assistance Program

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the LRC's Employee Assistance Program (EAP) coordinator within the Human Resources Division of the Department of Economic Development. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the return-to-duty/rehabilitation monitoring testing set forth in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2186 (October 2002).

§2119. General Provisions

A. The LRC reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, the LRC will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these rules is restricted to five specified drugs and alcohol, the LRC reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:37 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2186 (October 2002).

§2121. Safety-Sensitive Positions

A. There are no safety sensitive positions in the LRC at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:37 (January 2000), repromulgated by the Office of the Governor, Division of Administration, Racing Commission, LR 28:2186 (October 2002).

Charles A. Gardner, III
Executive Director

0210#028

RULE

Department of Health and Hospitals Board of Practical Nurse Examiners

Discipline, Licensure, and Temporary Permits
(LAC 46:XLVII.303, 306, 1703, 1705, and 1707)

The Board of Practical Nurse Examiners has amended LAC 46:XLVII. 303, 306, 1703, 1705, 1707, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Practical Nursing Practice Act, R.S. 37:961-979.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 1. Practical Nurses

Chapter 3. Board of Practical Nurse Examiners

§303. Additional Duties and Powers of the Board

A. - A.2. ...

3. determine the passing score for the practical nursing licensure examination of initial licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:193 (April 1977), amended LR 10:335 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 26:2614 (November 2000), LR 28:2187 (October 2002).

§306. Rules and Adjudication and License Suspension and Revocation Proceedings

A. - B. ...

C. Communications received by the board expressing such allegation(s) shall be privileged, confidential, and shall not be revealed to any person except when such document(s) are offered for evidence in a formal hearing.

D. The allegation(s) shall be investigated by the executive director, his/her designee, and/or staff. Any information and/or documents generated pursuant to such investigation of the allegation(s) shall be considered the work product of the board and shall be privileged, confidential, and shall not be revealed to any person except when such investigative information and/or documents are offered for evidence in a formal hearing.

E. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default. A consent order or agreed settlement shall be presented to the board for approval before it becomes binding.

F. If a matter is not concluded by informal proceedings and a formal hearing is deemed necessary by the executive director, a formal hearing shall be scheduled before a hearing officer designated by the board. A decision to initiate a formal complaint by the board expressing the allegation(s) and specific violation(s) of R.S. 37:961-979 may be made if one or more of the following conditions exist:

1. the allegation(s) are sufficiently serious;
2. the licensee fails to respond to the board's correspondence concerning the allegation(s);

3. the licensee's response to the board's correspondence is insufficient, unsatisfactory, or fails to be convincing that no action is warranted;

4. an informal proceeding has failed to resolve all of the issues or allegation(s).

G. Formal hearing procedures shall commence with the filing of a formal complaint by the board. The complaint shall include:

1. a statement of the time, place and nature of the hearing;

2. a statement of the legal authority and jurisdiction under which the hearing is to be held;

3. a reference to the particular sections of R.S. 37:961 et seq., and/or rules involved;

4. A short and plain statement of the matters asserted. If the board is unable to state the matters in detail at the time the complaint is served, the initial complaint may be limited to a statement of the issues involved. Thereafter, upon request, a more definite and detailed statement shall be furnished.

H. The formal complaint shall be sent by certified mail, a minimum of 20 days prior to the hearing date, to the last known address of the accused licensee. If the mailing is not returned to the board, it is assumed to have been received by said licensee as it is the licensee's obligation and duty to keep the board informed of his/her whereabouts.

I. The licensee shall return his/her response to the complaint to the board within 10 days or shall be deemed to have waived his/her right to a hearing. In response, the licensee shall either deny or admit the allegations of the complaint and may either:

1. appear for the scheduled hearing;

2. submit a written response to the hearing officer to be presented at the hearing in lieu of the licensee's live testimony; or

3. waive his/her right to a hearing.

J. If the licensee waives his/her right to a hearing or does not respond in writing within the time allotted, the hearing officer shall decide the case forthwith. The hearing officer shall make specific findings of fact, conclusions of law, and make recommendations to the board.

K. Opportunity shall be afforded to all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

L. Except for conditions of extreme emergency, motions requesting the continuance of a formal hearing must be received by the board at least five days prior to the date fixed for a formal hearing. Such motion must express the specific reason(s) and show good cause why a continuance is warranted and be relevant for due process.

M. Discovery

1. Prior to a formal hearing, an accused licensee shall have the right to retain an attorney to represent his/her interest before, during, and after the proceedings. All costs and/or expenses incurred by a licensee as a result of his/her exercise of said right shall be the sole responsibility and obligation of the licensee.

2. Prior to a formal hearing, the executive director or his/her designee will, upon written request received by the board at least five days prior to the formal hearing, issue subpoenas on behalf of the board and/or the accused licensee. Such subpoenas include or are for the purpose of:

a. requiring that a person appear and give testimony in the formal hearing; and

b. subpoena duces tecum, requiring that a person produce books, records, correspondence, or other materials over which he/she has control providing:

i. the information requested is reasonable in terms of amount; and

ii. the scope of the information requested is limited to documentary material that is relevant to the proceeding;

iii. the information requested does not include those documents referred to in §306.C-D; and

iv. the requesting party deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in the proceedings is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

3. Prior to a formal hearing, an accused licensee shall, upon written notice received by the board at least five days prior to said hearing, be given a list of all witnesses the board will or may call to give testimony during a formal hearing.

4. Prior to a formal hearing, an accused licensee, his/her attorney, or any party representing his/her interest is prohibited from having any contact whatsoever with any witness which will or may be called to give testimony in a formal hearing.

5. Depositions for the purpose of discovery are not permissible and may only be allowed for the perpetuation of a witness's testimony upon good showing to the board that a witness will be unavailable to appear in person at a formal hearing. All costs of a deposition are borne by the requesting party.

6. Motions may be made before, during, and/or after a formal hearing. All motions made before and after a formal hearing shall be made in writing and in a timely manner in accordance with the nature of the request. Motions made during a formal hearing shall be made orally, as they become a part of the transcript of the proceeding.

N. During a formal hearing, the licensee or his/her attorney shall be afforded the opportunity to present documentary, visual, physical or illustrative evidence and to cross-examine witnesses as well as call witnesses to give oral testimony on behalf of the licensee. All testimony given during a formal hearing shall be under oath and before a certified stenographer.

O. The record of the proceeding shall be retained until such time for any appeal has expired or until an appeal has been concluded. The record of the proceeding shall not be transcribed until such time as a party to the proceeding so requests, and the requesting party pays for the cost of the transcript.

P. After the hearing is concluded, the hearing officer shall issue a report containing his/her findings of fact, conclusions of law and recommendations. This report shall be presented to the board.

Q. The board shall make a decision based on the hearing officer's report and determine what sanctions, if any, should

be imposed and issue an appropriate order with respect thereto. This order of the board shall be sent to the licensee by certified mail.

R. Sanctions imposed by the board may include reprimand, probation, suspension, revocation, as well as penalties provided under R.S. 37:961 et seq., as amended or any combination thereof.

1. Reprimand. May include a personal conference between the licensee and the executive director and/or a letter to the licensee regarding the incident or incidents which have been brought to the board's attention and which may or may not be determined to warrant a hearing.

2. Probation. Will include stipulations which may be imposed by the board as a result of the findings of facts of a hearing and the order shall clarify the obligations of the licensee through a specified period of time. A licensee who is placed on probation by the board may practice practical nursing in the state of Louisiana provided the probation terms are met.

3. Suspension. A license to practice practical nursing in the state of Louisiana may be withheld by the board as a result of the findings of facts presented in a hearing. The time of suspension may be a definite stated period or an indefinite term. A licensee whose license is suspended may not practice practical nursing in the state of Louisiana during the suspension period so designated.

a. Definite time of suspension shall be stipulated by the board in the order to the licensee. Upon termination of the time period the licensee shall be entitled to receive his/her license upon payment of the required fee and upon documented compliance with the conditions which may have been imposed by the board at the time of the original order.

b. If a license is suspended for an indefinite term, the licensee may petition for reinstatement of his/her license only after one calendar year has lapsed from the date of the original order. The board may terminate the suspension and reinstate such license after a hearing is held and the board determines that the cause/causes for the suspension no longer exist or that intervening circumstances have altered the condition leading to the suspension. If reinstatement is granted the licensee shall pay the required reinstatement fee.

4. Revocation. A license to practice practical nursing in the state of Louisiana may be withdrawn by the board. A person whose license is so revoked shall never again be allowed to practice practical nursing in the state.

S. A petition by a party for reconsideration or rehearing must be in proper form and filed within 30 days after notification of the board's decision. The petition shall set forth the grounds for the rehearing, which include one or more of the following:

1. the board's decision is clearly contrary to the law and the evidence;

2. there is newly discovered evidence which was not available to the board or the licensee at the time of the hearing and which may be sufficient to reverse the board's action;

3. there is a showing that issues not previously considered ought to be examined in order to dispose of the case properly;

4. it would be in the public interest to further consider the issues and the evidence.

T. The grounds for disciplinary proceedings against a licensed practical nurse include, but are not limited to:

1. being guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing;
2. being guilty of a crime;
3. being unfit, or incompetent by reason of negligence, habit or other causes;
4. being habitually intemperate or is addicted to the use of habit-forming drugs;
5. being mentally incompetent;
6. practicing practical nursing without being duly licensed to do so by the board;
7. using in connection with his name any designation tending to imply that he is a practical nurse without being duly licensed to practice by the board; or
8. being guilty of unprofessional conduct; unprofessional conduct includes, but is not limited to the following:
 - a. failure to practice practical nursing in accordance with the standards normally expected;
 - b. failure to utilize appropriate judgment in administering nursing practice;
 - c. failure to exercise technical competence in carrying out nursing care;
 - d. violating the confidentiality of information or knowledge concerning a patient;
 - e. performing procedures beyond the authorized scope of practical nursing;
 - f. performing duties and assuming responsibilities within the scope of the definition of practical nursing when competency has not been achieved or maintained, or where competency has not been achieved or maintained in a particular specialty;
 - g. improper use of drugs, medical supplies, or patients' records;
 - h. misappropriating personal items of an individual or the agency;
 - i. falsifying records;
 - j. intentionally committing any act that adversely affects the physical or psychosocial welfare of the patient;
 - k. delegating nursing care, functions, tasks, or responsibilities to others contrary to regulation;

- r. possess a physical or psychological impairment which interferes with the judgment, skills or abilities required for the practice of practical nursing;
- s. refusal to cooperate with employer's request to submit to a drug screen;
- t. has violated any provisions of R.S. 37:961 et seq. (the practical nursing practice act), as amended or aid or abet therein.

U. The board may, at its discretion, impose a reasonable monetary assessment against the licensee or applicant for licensure for the purpose of defraying expenses of a hearing and/or expenses of the board in monitoring any disciplinary stipulations imposed by order of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:978 and Acts 675 and 827, 1993.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 20:663 (June 1994), amended LR 26:2614 (November 2000), LR 28:2187 (October 2002).

Chapter 17. Licensure

§1703. Types of Licensure

A. - A.2. ...

3. complete a board approved refresher course if a passing score is not attained within four years of program completion.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969, 37:971 and 37:972.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:199 (April 1977), LR 10:341 (April 1984), LR 10:915 (November 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1129 (October 1992), repromulgated LR 18:1263 (November 1992), LR 28:2189 (October 2002).

§1705. Temporary Permit

A. A temporary permit to practice as a practical nurse in Louisiana may be issued as follows.

1. A temporary permit may be issued to graduates of approved or accredited practical nursing programs in Louisiana before the first writing of the licensure examination which permit shall expire upon the date of licensure of that examination and which shall not be subject to extension or renewal under any circumstances - including reentry and completion of a program in practical nursing, providing the application for licensure and the specified fee have been submitted by the applicant and an official transcript has been submitted by the institution from which he/she graduated.

A.2 - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969 and 37:976.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:199 (April 1977), amended LR 5:65 (March 1979), LR 10:341 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1130 (October 1992), repromulgated LR 18:1263 (November 1992), LR 28:2189 (October 2002).

§1707. Retirement from Practice

A. - B.3. ...

C. Review Courses. Licensees or applicants for licensure in Louisiana who have been out of practice for four or more

years shall be required to successfully complete a refresher course approved by the board. Said course shall have a clinical component of a minimum of 60 hours. Special student permits may be issued by the board to participants in such courses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:969, 37:972-975, 37:977, 37:978 and 37:979.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Practical Nurse Examiners, LR 3:200 (April 1977), amended LR 10:342 (April 1984), amended by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 18:1130 (October 1992), repromulgated LR 18:1263 (November 1992), amended LR 26:2614 (November 2000), LR 28:2189 (October 2002).

Claire Doody Glaviano
Executive Director

0210#027

RULE

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

Facility Need Review
Emergency Community Home Bed Pool
(LAC 48:I.12501 and 12503)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended the Facility Need Review regulations as authorized by R.S. 40:2116. This Rule is amended in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

**PUBLIC HEALTHC GENERAL
Part I. General Administration
Subpart 5. Health Planning**

Chapter 125. Facility Need Review

§12501. Introduction

- A. ...
- B. Definitions

*Emergency Community Home Bed Pool*Ca pool consisting of approved beds which have been transferred from state developmental centers and which are made available for transfer to nonstate-operated community homes in order to address emergency situations on a case-by-case basis.

- C. - F.6. ...

7. Beds may not be disenrolled, except as provided under the alternate use policy, under the Emergency Community Home Bed Pool exception, and during the 120-day period to have beds relicensed or recertified. The approval for beds disenrolled, except as indicated, will automatically expire.

- 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002).

§12503. Determination of Bed Need

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

7. Emergency Community Home Bed Pool Exception

a. The Emergency Community Home Bed Pool consists of all Medicaid enrolled beds which have been authorized to be transferred from state developmental centers to nonstate-operated community homes on or before June 30, 2002, in order to address emergency situations on a case-by-case basis.

b. Effective July 1, 2002, the Secretary of the Department may not authorize the transfer of any beds from the Emergency Community Home Bed Pool to a nonstate operated community home unless the bed had been authorized to be transferred to a nonstate operated community home on or before June 30, 2002 and was subsequently transferred from that facility back to the pool pursuant to §12503.7.f.

c. Emergency situations which may be addressed through the use of the Emergency Community Home Bed Pool shall include, but not be limited to, situations in which it is difficult or impossible to find a placement for an individual in an ICF/MR because of one of the following:

i. an inadequate number of available ICF/MR beds in the service area to serve the needs of the mentally retarded/developmentally disabled population in general;

ii. an inadequate number of available ICF/MR beds in the service area to serve the needs of the mentally retarded/developmentally disabled population who also have physical or behavioral disabilities or difficulties;

iii. an inadequate number of available ICF/MR beds in the service area to provide for the transition of individuals from residing in large residential facilities to residing within the community.

d. Any agency or individual who becomes aware of an actual or potential emergency situation should inform the Office for Citizens with Developmental Disabilities (OCDD). The OCDD shall submit to the Facility Need Review Program its recommendations for emergency placement. The recommendations from the OCDD shall include identification of the individual in need of emergency placement, the individual's needs, the service area in which transfer from the Emergency Community Home Bed Pool is requested, and the names of one or more existing community homes that would be appropriate for emergency placement.

e. To be eligible for transfer of one or more beds from the Emergency Community Home Bed Pool, a community home must meet the following requirements, based on documentation provided by the Health Standards Section.

i. The facility must comply with the physical accessibility requirements of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, or if it does not comply with those requirements, it must have a written plan to be in compliance within 24 months.

ii. The facility can not have been on a termination track or have had any repeat deficiencies within the last 12 months.

iii. The facility must meet all square footage requirements, *Life Safety Code* requirements and general construction requirements of 42 CFR Subpart D, Conditions of Participation for ICF/MR, as well as Standards for

Payment, LAC 50:II.Chapter 103 and Louisiana Licensing Requirements for Intermediate Care Facilities.

iv. The facility must ensure the provision of sufficient staffing and behavior modification plans to meet the needs of current residents and prevent clients residing in the facility from being adversely affected by the emergency admission.

f. The Secretary shall authorize the transfer of the bed to be used at the nonstate-operated community home, and upon the enrollment of the transferred bed at that community home, it shall be permanently transferred to that facility, subject to the following conditions.

i. Once the bed is no longer needed to remedy the emergency situation, the facility shall continue to make it available for subsequent emergency placements, although it may be used temporarily to serve other individuals until it is needed for a new emergency placement.

ii. The facility shall make the bed available for a new emergency placement within 72 hours after receiving a request for such placement from the department as set forth herein. If the facility does not comply with such a request, the secretary may, at his discretion, transfer the bed from the facility back to the Emergency Community Home Bed Pool.

g. Beds which have been placed in the Emergency Community Home Bed Pool shall be exempt from the bed need criteria and the requirements for requests for proposals which are normally applicable to ICF/MRs.

h. For purposes of the Emergency Community Home Bed Pool exception, the definition of "service area" provided in §12503.A.1 is applicable.

B. - B.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002).

David W. Hood
Secretary

0210#061

RULE

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

**Minimum Licensing Standards
End Stage Renal Disease Treatment Facilities
(LAC 48:I.Chapter 84)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This final Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTHB GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 84. End Stage Renal Disease Treatment Facilities

Subchapter A. General Provisions

§8401. Acronyms and Definitions

A. The following words and terms, when used in this Chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Abuse Any act or failure to act that caused or may have caused injury to a patient knowingly, recklessly, or intentionally, including incitement to act. Injury may include, but is not limited to: physical injury, mental disorientation, or emotional harm, whether it is caused by physical action or verbal statement. Patient abuse includes:

- a. any sexual activity between facility personnel and a patient;
- b. corporal punishment;
- c. efforts to intimidate;
- d. the use of any form of communication to threaten, curse, shame, or degrade a patient;
- e. restraints that do not conform to standard practice;
- f. coercive or restrictive actions that are illegal or not justified by the patient's condition, taken in response to the patient's request for discharge or refusal of medication or treatment; and
- g. any other act or omission classified as abuse by Louisiana law.

Acronyms (Federal)C

- a. CFRC Code of Federal Regulations
- b. CMSC Centers for Medicare and Medicaid Services
- c. Network (13)CFederal ESRD Quality Assurance Supplier
- d. PROC Peer Review Organization

Adequacy of Dialysis Cterm describing the outcome of dialysis treatment as measured by clinical laboratory procedures.

Adequate/Sufficient Creasonable, enough: e.g., personnel to meet the needs of the patients.

Advertise Cto solicit or induce to purchase the services provided by a facility.

Assessment Cgathering of information relative to physiological, behavioral, sociological, spiritual, functional and environmental impairments and strengths of the patient using the skills, education, and experience of one's professional scope of practice.

Board(s) Centities responsible for licensing/certification of specific professions (e.g., nursing, counselors, social workers, physicians, etc.).

Chronic Maintenance Dialysis Cdialysis that is regularly furnished to an End Stage Renal Disease (ESRD) patient in a hospital-based, independent (free-standing), or home setting.

Consultation Cprofessional oversight, advice, or services provided under contract.

Consumer/PatientCperson assigned or accepted for treatment furnished by a licensed facility as specified.

Delegation of TasksCassignment of duties by a registered nurse to a licensed practical nurse, or other personnel with respect to their training, ability and experience. The registered nurse cannot delegate complex nursing tasks that have not been approved as appropriate for delegation, responsibility, or tasks requiring judgment.

DepartmentCthe Louisiana Department of Health and Hospitals (DHH). The following is a list of pertinent sections of DHH.

a. **Health Standards Section (HSS)**Cthe section within the Bureau of Health Services Financing that is responsible for conducting surveys, issuing licenses, and serving as the regulatory body for health care facilities in the state.

b. **Office for Public Health (OPH)**Cthe office that is responsible for the development and enforcement of public health regulations and codes.

c. **Division of Architectural Services**Cthe office that is responsible for the professional review of all facility floor plans and site plans prior to licensing to assure compliance with state laws and codes.

d. **Program Integrity Section**Cthe section within the Bureau of Health Services Financing that is responsible for investigating alleged fraud and abuse.

DialysisCa process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane. The two types of dialysis that are currently in common use are hemodialysis and peritoneal dialysis.

End-Stage Renal Disease (ESRD)Cthat stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

End-Stage Renal Disease Treatment FacilityCa facility that presents to the public as a supplier of chronic dialysis services including, at least, hemodialysis, but may also include peritoneal dialysis, home training, or home support.

ExploitationCany act or process to use (either directly or indirectly) the labor or resources of a patient for monetary or personal benefit, profit, or gain of another individual or organization. Examples of exploitation include:

a. use of a patient's personal resources such as credit cards, medical assistance cards, or insurance cards to bill for inappropriate services;

b. use of the patient's food stamps or other income to purchase food or services used primarily by others; and

c. using the patient to solicit money or anything of value from the public.

FacilityCa supplier of services, including all employees, consultants, managers, owners, and volunteers as well as the premises and activities.

Medication AdministrationCthe preparation and giving of legally prescribed individual doses of medication to a patient, including the observation and monitoring of the patient's response to the medication.

Medication DispensingCthe compounding, packaging, and giving of legally prescribed multiple doses of medication to a patient.

NeglectCfailure to provide adequate health care or failure to provide a safe environment that is free from abuse

or danger; failure to maintain adequate numbers of appropriately trained staff; or any other act or omission classified as neglect by Louisiana law.

Office of the State Fire Marshal (OSFM)Cthe office that is responsible for establishing and enforcing the regulations governing building codes, including Life Safety Codes for healthcare facilities.

On CallCimmediately available for telephone consultation.

Sexual ExploitationCa pattern, practice, or scheme of conduct that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person. It may include sexual contact, a request for sexual contact, or a representation that sexual contact or exploitation is consistent with or part of treatment.

Site/PremisesCan identifiable location owned, leased, or controlled by a facility where any element of treatment is offered or provided.

StaffCindividuals who provide services for the facility in exchange for money or other compensation, including employees, contract providers/suppliers, and consultants.

StandardsCpolicies, procedures, rules, and other guidelines (i.e., standards of current practice) contained in this document for the licensing and operation of end-stage renal disease treatment facilities.

SupervisionCoccupational oversight, responsibility and control over employees and/or service delivery by critically watching, monitoring, and providing direction.

Unethical ConductCconduct prohibited by the ethical standards adopted by DHH, state or national professional organizations or by a state licensing agency.

Unprofessional ConductCany act or omission that violates commonly accepted standards of behavior for individuals or organizations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2191 (October 2002).

§8403. Licensing

A. Any facility that presents itself to the public as a supplier of chronic dialysis treatment services and/or dialysis training to individuals diagnosed with end stage renal disease is required to have a valid and current license. The facility shall not provide services without the appropriate license and shall advertise (or otherwise notify the public or other referral entities) only for services that the facility is licensed to provide. Each licensed facility must comply with the minimum requirements in order to remain licensed. In addition, each facility is required to have a copy of the minimum standards on site, and all administrative and professional staff shall be familiar with the minimum standards.

B. In order to be licensed as an ESRD facility in Louisiana the facility must also be in continuous compliance with federal regulatory requirements applicable to ESRD facilities, including but not limited to: 42CFR §405.2135-2140; 42 CFR §405.2150, and §2160-2164.

C. The initial application process assures that the facility is capable of organizing and planning an operation to provide dialysis services as designated on the license. The application packet and procedures may be obtained from DHH/HSS.

D. Renewal. A license must be renewed at least annually.

E. License Types

1. Full License. A full license is issued to agencies that are in compliance with the minimum standards and all other licensing requirements. The license is valid until the date of expiration unless it is revoked or suspended prior to the date of expiration, or the license renewal is denied.

2. Provisional License. A provisional license is issued to facilities that are not in compliance with the minimum standards and whose license will be terminated if systemic changes fail to correct identified problems. Cited deficiencies shall not be detrimental to the health and safety of clients. A provisional license is valid for six months or until a designated termination date.

F. The current license shall be displayed on-site at each facility. Any license issued by DHH supersedes all other licenses and those previously issued licenses are deemed invalid. Any facility displaying and/or using an invalid or altered license will be sanctioned.

G Notification of Change. Failure to report any of the following changes in writing to HSS within 10 days of the occurrence of the change is considered delinquent and subject to sanction. Written approval of changes by DHH is required for the facility to remain in compliance with licensing standards. An on-site survey, at the discretion of HSS, may be required prior to issuance of a new license.

1. Change of Ownership. A license is non-transferrable. The new owners must apply for a new license and submit a new application form, copy of the bill of sale, licensing fee, disclosure of ownership form, and information regarding relocation, name change, etc.

2. New Construction. All plans must have prior approval of the OSFM and Division of Architectural Services.

3. Renovations. All plans must have prior approval of the OSFM and Division of Architectural Services, when required.

4. Change of Address. Address changes require the issuance of a replacement license and must be prior authorized. Authorization is based on the submission of requested information to HSS.

5. Change in Services. Providing additional services requires the submission of an application packet appropriate to the new service. Interim approval may be granted based on the review of the submitted documentation. Permanent approval will be granted automatically at the next on-site survey unless the facility is found to be out of compliance. Deleting existing services requires the submission of written notification to HSS.

6. Days of Operation. Written notification to HSS is required in advance of a change in the facility's days of operation.

7. Change in Stations. Facilities wishing to increase or decrease the number of stations shall be required to submit in writing to HSS at least 30 days in advance of the change.

H. If at any time the facility decides to cease operations, the facility shall notify HSS of the date of the cessation of services, the permanent location of the records and surrender the license.

1. All active patients and pertinent information shall be referred/transferred to the nearest appropriate treatment facility.

2. Written notification and the license shall be sent to HSS within five working days.

3. Notice of intent to cease operation shall be published in the local newspaper with the widest circulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2192 (October 2002).

§8405. Fees, Fines, and Assessments

A. All fees must be submitted to DHH in the form of a company or certified check or money order, and made payable to the Department of Health and Hospitals. All fees are non-refundable and non-transferable.

1. The current fee schedule is available upon request.

2. The fee for the initial application and licensing process shall be submitted prior to review and consideration of the licensing application.

3. The annual renewal fee is payable in advance of the issuance of the renewal license.

4. A fee must accompany any request requiring the issuance of a replacement license.

5. A renewal or other fee is considered delinquent after the due date and an additional fee shall be assessed beginning on the day after the date due. No license will be issued until applicable fees are paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2193 (October 2002).

§8407. Survey

A. All surveys shall be unannounced and may be conducted with other agency personnel and/or personnel from other local, state or federal agencies. A survey of all aspects of the facility's operation is required prior to issuing a license.

B. Initial Survey. DHH shall determine through an on-site review if the facility is capable of becoming fully operational. The procedures for the on-site review may be obtained from HSS.

C. Annual Survey. An on-site survey of the facility is performed or an attestation from the facility is received annually to assure continuous adherence to standards.

D. Follow-up Surveys. An on-site visit is performed or documentation is requested for a desk review to ensure that corrective actions have been taken as stated in the plan of corrections and to assure continued compliance between surveys.

E. DHH shall determine the type and extent of investigation to be made in response to complaints in accordance with R.S. 40:2009.13 et seq.

1. The facility may be required to do an internal investigation and submit a report to HSS.

2. HSS and other federal, state and local agencies may conduct an on-site focused or complete survey as appropriate.

F. Written plans of correction shall be submitted to HSS to describe actions taken by the facility in response to cited violations. The plan must be submitted within 10 days of the date of the receipt of the notice of deficiencies, or the provider may be sanctioned. All components of the

corrective action plan must be specific and realistic, including the dates of completion.

1. The correction plan shall include the following components:
 - a. the actions taken to correct any problems caused by a deficient practice directed to a specific patient;
 - b. the actions taken to identify other patients who may also have been affected by a deficient practice, and to assure that corrective action will have a positive impact for all patients;
 - c. the systemic changes made to ensure that the deficient practice will not recur;
 - d. a monitoring plan developed to prevent recurrence; and
 - e. the date(s) when corrective action will be completed.

G. Corrections must be completed within 60 days of the survey unless HSS directs that corrective action be completed in less time due to danger or potential danger to patients or staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2193 (October 2002).

§8409. Adverse Actions

A. DHH reserves the right to suspend, deny (initial or renewal), or revoke any license at the discretion of the Secretary or his/her designee. Any involuntary termination of a facility's license or voluntary termination to avoid adverse action automatically disqualifies the facility and those associated with the facility from applying for a license for a period of at least one year.

B. Provisional License Designation. See §8403.E.2.

C. Denial of Initial Licensing. An initial license request may be denied in accordance with R.S. 40:2117.5(A).

D. A license may be revoked or denied for any of the following nonexclusive reasons. See also R.S. 40:2117.5:

1. cruelty or indifference to the welfare of the patients;
2. misappropriation or conversion of the property of the patients; or
3. violation of any provision of the End Stage Renal Disease Facilities statute R.S.40:2117 et seq. or of the minimum standards, rules, and regulations, as follows:
 - a. providing services to more stations than authorized by license;
 - b. repeated failure to adhere to rules and regulations that resulted in the issuance of a provisional license or other sanction;
 - c. serious violation of these standards or current professional standards of practice;
 - d. failure to submit corrective action plans for identified violations;
 - e. reasonable cause to suspect that patient health and/or safety is jeopardized;
 - f. reliable evidence that the facility has:
 - i. falsified records;
 - ii. bribed, solicited or harassed any person to use the services of any particular facility;
 - g. failure to submit required fees in a timely manner;
 - h. failure to cooperate with a survey and/or investigation by DHH and/or authorized agencies; or

i. failure to meet operational requirements as defined in §8423.C;

4. permitting, aiding, or abetting the unlawful, illicit, or unauthorized use of drugs or alcohol within the facility;

5. conviction or plea of nolo contendere by the applicant for a felony. If the applicant is an agency, the head of that agency must be free of such conviction. If a subordinate employee is convicted of a felony, the matter must be handled administratively to the satisfaction of HSS;

6. documented information of past or present conduct or practices of the facility that are detrimental to the welfare of the patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2194 (October 2002).

§8411. Appeals

A. The Health Standards Section shall give at least 30 days notice of the denial of renewal or revocation of license unless it determines that the health and/or safety of patients is in jeopardy. In the event that it is determined that the health and/or safety of patients is in jeopardy, the license may be revoked immediately with appeal rights granted after the facility ceases operation and patients are transferred to another facility. The facility may appeal within 30 days following the revocation.

B. Requests for an administrative reconsideration must be submitted in writing to HSS within 15 days of the receipt of the denial of renewal or revocation notice.

C. Requests for an administrative appeal must be submitted in writing to DHH, Office of the Secretary within 15 days of the receipt of the denial of renewal or revocation notice. Requests for administrative reconsideration do not affect the timeframes for requesting an administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2194 (October 2002).

Subchapter B. Facility Operations

§8423. Operational Procedures

A. Each facility shall establish facility-specific, written policy and implement such policy in these areas:

1. procedures to ensure the health, safety, and well-being of patients;
 2. The procedure to ensure sound patient care in conformity with current standards of practice;
 3. protocols to assure uniform and quality assessment, diagnosis, evaluation, and referral to the appropriate level of care;
 4. procedures to assure operational capability and compliance;
 5. procedures to assure that only qualified personnel are providing care within their respective scope of practice;
 6. procedures to assure that patient information is collected, maintained, and stored according to current standards of practice; and
 7. standards of conduct for all personnel in the facility.
- B. Continuous Quality Program (CQP). The facility shall:

1. have ongoing programs to assure that the overall function of the facility is in compliance with federal, state, and local laws, and is meeting the needs of the citizens of the area as well as attaining the goals and objectives developed from the mission statement established by the facility;

2. focus on improving patient outcomes and patient satisfaction;

3. have objective measures to allow tracking of performance over time to ensure that improvements are sustained;

4. develop and/or adopt quality indicators that are predictive of desired outcomes and can be measured, analyzed and tracked;

5. identify its own measure of performance for the activities that are identified as priorities in quality assessment and performance improvement strategy;

6. immediately correct problems that are identified through its quality assessment and improvement program that actually or potentially affect the health and safety of the patients;

7. develop and implement an annual internal evaluation procedure to collect necessary data for formulation of a plan. In addition, conduct quarterly meetings of a professional staff committee (at least 3 individuals) to select and assess continuous quality activities, to set goals for the quarter, to evaluate the activities of the previous quarter, and to immediately implement any changes that would protect the patients from potential harm or injury;

8. implement a quarterly utilization review of 5 percent of the active patient records (minimum of 10 records) by professional staff;

9. complete an annual documented review of policies, procedures, financial data, patient statistics, and survey data by the governing board/regional administrator; and

10. participate as requested with state and federal initiatives to assure quality care.

C. Operational Requirements. The facility shall:

1. be fully operational for the business of providing dialysis as indicated on the approved original application or notice of change;

2. be in compliance with R.S.40:2007, if the facility is operated within another health care facility;

3. have active patients at the time of any survey after the initial survey;

4. utilize staff to provide services based on the needs of their current patients;

5. have required staff present in the facility at all times whenever patients are undergoing dialysis;

6. develop, implement, and enforce policies and/or procedures that eliminate or greatly reduce the risk of patient care errors; and

7. develop procedures to communicate to staff and to respond immediately to market warnings, alerts, and recalls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2194(October 2002).

§8425. Facility Records

A. Record keeping shall be in accordance with accepted standards to assure the development and implementation of

facility specific policies and procedures to adhere to all licensing standards. Specific facility records shall contain:

1. personnel information including:

a. annual health screens in accordance with CDC/OPH guidelines and facility policy;

b. actual hours of work;

c. orientation/training/in-services;

d. disciplinary actions;

e. verification of professional credentials, licensing/certification and renewals; and

f. job descriptions/performance expectations;

2. operational information including:

a. organizational chart;

b. payment methods in accordance with the Wage and Hour Board;

c. proof of general and professional liability insurance in the amount of at least, \$500,000;

d. projected plan of operations based on the findings of the facility specific continuous improvement program; and

e. written agreements with other entities to assure adherence to licensing standards and continuity of care, e.g., transplant services, lab services, waste removal, hospital, etc.;

3. identification of a governing body composed of adults who have legal authority over the policies and activities of the facility as required by 42 CFR §405.2136. All private providers must comply with this requirement.

B. Required Facility Reports. The facility director shall report the following incidents either verbally or by facsimile to HSS within 24 hours of discovery. If reporting is verbal, it will be confirmed in writing within seven calendar days.

1. fire and/or natural disasters;

2. any substantial disruption of program operation;

3. any inappropriate treatment or service resulting in death or serious injury; and

4. serious violations of laws, rules, and professional and ethical codes of conduct, e.g. abuse, neglect, exploitation by facility personnel/volunteers that resulted in harm or the potential for harm to the patient(s). Patient to patient abuse shall also be reported to the agency.

C. The facility shall post a legible copy of the following documents in full view of patients, visitors, and employees:

1. patient bill of rights/responsibilities;

2. escape routes;

3. facility specific rules, responsibilities and grievance procedures;

4. current license and variances; and

5. current licensing survey findings.

D. The facility shall maintain the following operational records:

1. equipment maintenance;

2. water testing logs;

3. reprocessing logs;

4. fire and safety logs;

5. in-services/attendance records;

6. personnel records; and

7. disinfection logs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2195 (October 2002).

§8427. Health and Safety

A. Infection Control

1. The facility shall protect staff, patients, and visitors from potential and/or actual harm from infectious disease by utilizing the following policies and procedures.

a. Development and implementation of a universal precautions program that includes education and practice.

b. Development and implementation of a infection control program to report, evaluate, and maintain documentation pertaining to the spread of infectious disease, including data collection and analysis, corrective actions, and assignment of responsibility to designated medical staff person (including access infections).

c. The facility shall strictly adhere to all sanitation requirements.

2. The facility shall establish and maintain a clean environment by the implementation of the following housekeeping policies and procedures:

a. supplies and equipment shall be available to staff and/or patients;

b. consistent and constant monitoring and cleaning of all areas of the facility shall be practiced; and

3. the facility may contract for services necessary to maintain a clean environment.

B. Sanitation

1. Food and waste shall be stored, handled, and removed in a way that will not spread disease, cause odors, or provide a breeding place for pests.

2. If there is evidence of pests, the facility shall contract for pest control.

C. Environmental Safety

1. The entire facility (including grounds, buildings, furniture, appliances, and equipment) shall be structurally sound, in good repair, clean, and free from health and safety hazards.

2. The facility shall comply with the Americans with Disabilities Act (ADA).

3. The facility shall prohibit firearms and/or other weapons.

4. Poisonous, toxic and flammable materials shall be properly labeled, stored, and used safely.

5. The facility shall take all possible precautions to protect the staff, patients and visitors from accidents or unnecessary injuries or illnesses.

D. The facility shall respond effectively during a fire or other emergency. Every facility shall:

1. have emergency evacuation procedures that include provisions for the handicapped;

2. hold simulated fire drills on each shift at least quarterly to familiarize facility personnel with the signals and emergency actions required; patients shall not be moved during drills;

3. be able to evacuate the building in a timely manner whenever necessary;

4. conspicuously post exit diagrams throughout the facility;

5. post emergency numbers by all phones; and

6. have adequate first aid supplies that are visible and easy to access whenever necessary.

E. The facility shall have a written facility specific disaster plan. The staff shall be able to access and implement the plan when required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2196 (October 2002).

§8429. Physical Plant Requirements

A. For licensing, an ESRD treatment facility applicant shall have architectural plans and specifications reviewed by the DHH Division of Engineering and Architectural Services using the current edition of the *American Institute of Architects Guidelines for Construction for Hospital and Health Care Facilities*.

B. The Office of the State Fire Marshal shall determine fire safety review requirements based upon applicable regulations.

C. Required Inspections

1. The facility shall pass all required inspections and keep a current file of reports and other documentation needed to demonstrate compliance with applicable laws and regulations. The inspections must be signed, dated, and free of any outstanding violations/citations. The following inspections are required:

a. annual fire marshal inspection;

b. annual inspection by the Office of Public Health (local health unit);

c. annual inspection and maintenance of fire extinguishers by personnel licensed or certified to perform those duties; and

d. regular inspections of elevators, if applicable.

2. The following documentation shall be on file in the facility:

a. certificate of occupancy as required by the local authorities;

b. DHH approval of the water supply/system; and

c. documentation that any liquefied petroleum supply has been inspected and approved.

D. Exterior Space Requirements. The facility shall:

1. ensure that all structures on the grounds of the facility that are accessible to patients are maintained in good repair and are free from identified hazards to health or safety;

2. maintain the grounds of the facility in an acceptable manner and ensure that the grounds are free from any hazard to health or safety;

3. store garbage and rubbish securely in non-combustible, covered containers that are emptied on a regular basis;

4. separate trash collection receptacles and incinerators from patient activity areas and locate all containers so that they are not a nuisance to neighbors; and

5. store and dispose of all medical waste in accordance with local, state, and federal guidelines.

E. Interior Space Requirements

1. Bathrooms. Minimum facilities shall include:

a. adequate operational fixtures that meet *Louisiana State Plumbing Code*. All fixtures must be functional and have the appropriate drain and drain trap to prevent sewage gas escape back into the facility;

b. an adequate supply of hot water. Hot water temperature at the point of service to patients shall be between 105°F and 120°F;

c. toilets with seats;

- d. an adequate supply of toilet paper, towels, and soap;
- e. doors to allow for individual privacy;
- f. external emergency release mechanism;
- g. safe and adequate supply of cold running water;

and

- h. functional toilets, wash basins, and other plumbing or sanitary facilities which shall be maintained in good operating condition and kept free of any materials that might clog or otherwise impair their operation.

2. Administrative and Counseling Space

- a. Administrative office(s) for records, secretarial work and bookkeeping shall be separate and secure from patient areas.

- b. Space shall be designated to allow for private discussions and counseling sessions.

3. Doors and Windows. Outside doors, windows and other features of the structure necessary for the safety and comfort of patients shall be secured for safety within 24 hours after they are found to be in a state of disrepair. Total repair should be completed as soon as possible.

4. Storage. The facility shall:

- a. ensure that there are sufficient and appropriate storage facilities; and
- b. secure all potentially harmful materials.

F. Exits

1. Exit doors and routes shall be lighted and unobstructed at all times.

2. There shall be an illuminated AEXIT@sign over each exit. Where the exit is not visible, there shall be an illuminated "EXIT" sign with an arrow pointing the way.

3. Rooms for 50 or more people shall have exit doors that swing out.

4. No door may require a key for emergency exit.

5. At least one window shall be provided in every treatment area.

6. Every building shall have at least two exits that are well separated.

7. Every multiple-story building shall have at least two fire escapes (not ladders) on each story that are well separated. Fire escapes shall:

- a. be made of non-combustible material;
- b. have sturdy handrails or walls on both sides; and
- c. provide a safe route to the ground.

8. Stairs and ramps shall be permanent and have non-slip surfaces.

9. Exit routes higher than 30 inches (such as stairs, ramps, balconies, landings, and porches) shall have full-length side guards.

G Electrical Systems. All electrical equipment, wiring, switches, sockets and outlets shall be maintained in good order and safe operating condition. All rooms, corridors, stairways and exits within a facility shall be sufficiently illuminated.

1. The facility shall have an illuminating system that provides lighting levels to support tasks performed by staff and the independent functioning of patients without the need for additional lighting.

2. Lighting shall be provided outside the building and in parking lots.

3. Light bulbs shall have shades, wire guards or other shields.

4. Emergency lighting shall illuminate AEXIT@routes.

H. Ventilation

1. The facility shall not use open flame heating equipment, floor furnaces, unvented space heaters, or portable heating units.

2. Occupied parts of the building shall be air conditioned and the temperature should remain between 65EF and 85EF.

3. The entire facility shall be adequately ventilated with fresh air. Windows used for ventilation shall be screened.

4. The facility shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of patients and staff.

I. Plumbing. The plumbing systems shall be designed, installed, operated and maintained in a manner that ensures an adequate and safe supply of water for all required facility operations and to facilitate the complete and safe removal of all storm water and waste water.

J. Finishes and Surfaces

1. Lead-based paint or materials containing asbestos shall not be used.

2. Floor coverings must promote cleanliness, must not present unusual problems for the handicapped and have flame-spread and smoke development ratings appropriate to the use area (e.g. patient's room versus exit corridor).

3. All variances in floors shall be easily identified by markings, etc. to prevent falls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2196 (October 2002).

Subchapter C. Personnel

§8439. General Provisions

A. Administration

1. The administrative staff shall be qualified and adequate to assure adherence to all licensing standards.

2. Qualifications of all facility staff shall meet or exceed those required by federal regulations.

3. Facility compliance with licensing standards shall determine adequacy of available administrative oversight.

4. Facilities shall be organized so that administrative personnel do not perform any clinical duties and/or make clinical decisions, unless the individual is licensed or certified to make clinical decisions.

B. Referrals, Credentials, and Contract Services

1. Facility personnel shall report referral violations of laws, rules, and professional and ethical codes of conduct to HSS and to appropriate licensing boards when applicable. The facility shall maintain records and have written policies governing staff conduct and reporting procedures that comply with this requirement.

2. The facility administrator is responsible for assuring that all credentials are from accredited institutions, are legal, and have been verified to deter the fraudulent use of credentials.

3. The facility must have formal written agreements with outside professionals or other entities retained to provide contract services. Both parties shall document the annual review of each agreement.

C. Staffing Criteria. Each facility shall develop and implement staffing level criteria to assure compliance with all licensing standards and to provide quality care within the established parameters of current standards of practice.

1. Consideration for determination of adequate nursing staffing levels will include:

- a. acuity of patients;
- b. physical design of facility;
- c. equipment design and complexity; and
- d. additional pertinent information as needed.

2. A registered nurse or physician shall be present during and after treatment and until the last patient has left the facility.

3. Any experience used to qualify for any position must be counted by using one year of experience equals 12 months of full-time work.

4. A person may hold more than one position within the facility if that person is qualified to function in both capacities, and the required hours for each job are separate and apart for each position.

5. Social work staffing shall be based on the staffing guidelines developed by the Council of Nephrology Social Workers which addresses the following:

a. treatment setting;

b. number of patients seen or anticipated to be seen in a year;

c. their psychological risk (acuity); and

d. the number of mutually agreed upon social work functions, including, but not limited to:

- i. psycho-social evaluations;
- ii. casework counseling;
- iii. group work;
- iv. information and referral;
- v. facilitating community agency referral;
- vi. team care planning and collaboration;
- vii. transfer planning;
- viii. pre-admission planning;
- ix. discharge planning
- x. facilitating use of hospital and/or facility services
- xi. patient/family education;
- xii. financial assistance;
- xiii. staff consultation; and
- xiv. community health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2197 (October 2002).

§8441. Training

A. Each employee shall complete appropriate orientation to the facility and to his/her work responsibilities prior to providing direct patient care/contact. The content of the basic orientation provided to all employees at the time of employment/annual review shall include:

1. policies/procedures and objectives of the facility;
2. duties and responsibilities of the employee;
3. organizational/reporting relationships;
4. ethics and confidentiality;
5. patient's rights;
6. standards of conduct required by the facility;
7. information on the disease process and expected

outcomes;

8. emergency procedures including the disaster plan and evacuation procedures;

9. principals and practices of maintaining a clean, healthy and safe environment;

10. specific information as appropriate to the employee's job duties;

11. universal precautions;

12. violent behavior in the workplace;

13. abuse/neglect and exploitation;

14. overview of ESRD licensing standards; and

15. basic emergency care of ill or injured persons until trained personnel can arrive.

B. In-service training is an educational offering that shall assist the direct care/contact workers in providing current treatment modalities, and serve as refresher for subjects covered in orientation. Documentation of attendance for at least three in-services per quarter is required. Additional educational programs are encouraged.

C. Patient Care Technician (PCT) or Dialysis Technician. Training and orientation shall reflect the American Nephrology Nurses Association (ANNA) standards of clinical practice, including but not limited to:

1. anatomy and physiology of the renal system;

2. principles of water treatment;

3. dialyzer reprocessing;

4. basics of nutrition in renal failure;

5. understanding of ethical issues impacting on nephrology practice;

6. communication and interpersonal skills;

7. standard precautions, as recommended by the Center for Disease Control;

8. concepts and principles of hemodialysis;

9. arteriovenous puncture for dialysis access techniques;

10. use of heparin in dialysis procedures;

11. use of isotonic saline in dialysis;

12. maintenance of the delivery system:

a. integrity of extra corporeal circuit;

b. pressure monitor readings;

c. anticoagulant delivery;

d. blood flow rate;

e. alarm limits and/or conditions;

13. observation and reports of complications to the registered nurse;

14. post-treatment access care guidelines;

15. disposal of supplies in compliance with standard precautions; and

16. agency policy regarding the cleaning of equipment and treatment area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2198 (October 2002).

§8443. Personnel Qualifications and Responsibilities

A. Chief Executive Officer or Administrator

1. Qualifications are as cited in the CFR and designated in writing by the governing body.

2. Responsibilities include:

a. enforcement of local, federal and state requirements;

b. overall management of the facility;

c. annual documented review and appropriate actions taken on all policies, procedures, facility rules, goals, grievances, budget, internal and external evaluations (including all survey findings);

d. implementation and enforcement of codes of conduct to ensure professional, ethical and legal operations; and

e. implementation and enforcement of facility practices that ensure that employees have the necessary administrative support to provide therapeutic milieu for patients (including adequate staff, supplies, and other support).

B. Clinical Nursing Supervisor

1. Qualifications

a. currently licensed as a registered nurse in the state of Louisiana;

b. eighteen months or more of clinical experience as a registered nurse; and

c. six months or more of clinical experience which must include: nursing care of a patient with permanent kidney failure or who is undergoing kidney transplantation, including training in and experience with the dialysis process.

2. Responsibilities include:

a. supervising the clinical nursing functions of the facility;

b. performing the liaison duties between others, including facility staff, physicians and patients;

c. supervising the training and performance of the technicians and non-medical staff in order to ensure safe care;

d. functioning as a patient advocate; and

e. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient receives safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46:XLVII.3901-3913.

C. Charge Nurse

1. Qualifications

a. currently licensed as registered nurse in the state of Louisiana;

b. six months or more of clinical experience as a registered nurse; and

c. three months or more of the clinical experience must include nursing care of a patient with permanent kidney failure or who is undergoing kidney transplantation, including training in and experience with the dialysis process.

d. The charge nurse shall be onsite and available to staff and patients in the treatment area, but may leave the immediate treatment area for meals and breaks.

2. Responsibilities include:

a. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient will receive safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46:XLVII.3901-3913;

b. performing initial verification and biannual validation of cannulating skills of dialysis technicians and LPN's;

c. providing supervision and assistance as needed to RN's, LPN's and dialysis technicians; and

d. being on site and available in the treatment area to provide patient care during all dialysis treatments, but may leave the immediate area for meals and breaks. However, during these periods of absence the facility must insure that all necessary care can be delivered by the licensed person on duty.

D. Registered Nurse

1. Qualifications. Possession of a current valid license or be an RN applicant with a temporary permit to practice in Louisiana.

2. Responsibilities include:

a. accepting responsibility and accountability for the assessment, planning, intervention, teaching, supervision, and evaluation of care to ensure that the patient will receive safe and effective dialysis treatment according to the prescribed treatment plan and in accordance with LAC 46:XLVII.3901-3913;

b. conducting admission nursing assessments with each visit prior to delegating any task other than collection of data (vital signs only);

c. reassessing patients as needed to determine a change in the patient's status or at the patient's request;

d. participating in the team review of a patient's progress;

e. recommending changes in treatment based on the patient's current needs;

f. providing oversight and direction to dialysis technicians and LPN's; and

g. participating in continuous quality improvement activities.

3. Registered nurses may perform the duties of the nursing positions cited above for which they are qualified and designated.

E. Dietitian/Nutritionist

1. Qualifications. Possession of a currently valid license with the Louisiana Board of Dietitians/Nutritionists.

2. Responsibilities include:

a. those duties defined in R.S. 37:3081-3094;

b. providing in-service and staff training, consultation to professionals and paraprofessionals, and direct supervision as needed to improve the overall quality of care being provided;

c. conducting individual and/or group didactic and counseling interaction with patients as needed to achieve compliance with dietary restrictions;

d. documenting direct communication with other dietitians who may be involved in the patient's care, such as dietitians at the nursing home, assisted living, etc;

e. providing continuous learning opportunities for patients and/or care givers, including regionally appropriate recipes when possible; and

f. providing adequate knowledge to staff to reinforce patient education.

F. Social Worker

1. Qualifications. Currently licensed by the Louisiana State Board of Social Work Examiners as a Licensed Clinical Social Worker.

2. Responsibilities include those duties defined in R.S. 37:2701-2723 including, but not limited to:

a. Assessment and evaluation of an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan.

b. Case Management function in which services, agencies, resources, or people are brought together within a planned framework of action directed toward the achievement of established goals. It may involve liaison activities and collateral contracts with other facilities.

c. Patient Education function in which information is provided to individuals and groups concerning the disease process and treatment, positive lifestyle changes, and available services and resources. Facility orientation may be included with information given regarding rules governing patient conduct and infractions that can lead to disciplinary action or discharge from the facility, availability of services, costs, and patient's rights.

d. Counseling (Individual/Group) services to provide appropriate support to the patient and/or family to assist individuals, families, or groups in achieving objectives through:

- i. exploration of a problem and its ramifications;
- ii. examination of attitudes and feelings;
- iii. consideration of alternative solutions; and
- iv. decision making and problem solving.

e. Referral assisting patient and/or family to optimally utilize the available support systems and community resources.

f. Treatment Planning function in which all disciplines and the patient:

- i. identify and rank problems needing resolution;
- ii. establish agreed upon immediate objectives and long-term goals; and
- iii. decide on a treatment process, frequency, and the resources to be utilized.

G Medical Director. Every facility shall have a designated medical director.

1. Qualifications

a. the medical director shall have a current, valid license to practice medicine in Louisiana;

b. be board certified in Internal Medicine or Pediatrics, or board eligible, or board certified in Nephrology;

c. have completed an accredited Nephrology training program;

d. have at least 12 months of experience or training in the care of patients at ESRD facilities; and

Exception: In emergency situations, such as, isolated rural areas, natural disasters, or the death of the qualified director, DHH may approve the interim appointment (for a limited time period) of a licensed physician who does not meet the above criteria.

2. Responsibilities include:

a. providing services as required by the facility to meet the standards;

b. providing oversight to ensure that the facility's policies/procedures and staff conform with the current standards of medical practice;

c. performing liaison duties between others, including facility staff, physicians, and patients;

d. ensuring that each patient at the facility receives medical care and supervision appropriate to his/her needs; and

e. ensuring that each patient is under the care of a physician.

H. Physician Services.

1. Each patient shall be under the care of a physician on the medical staff.

2. At a minimum, each patient receiving dialysis in the facility shall be seen by a physician, physician's assistant, or advanced practice nurse once every two weeks; home patients shall be seen at least every three months. There shall be evidence of monthly assessment for new and recurrent problems and review of dialysis adequacy.

3. At a minimum, each patient, whether receiving dialysis in the facility or at home, shall be seen by a physician once every twelve months.

4. If advanced practice nurses or physicians assistants are utilized:

a. there shall be evidence of communication with the treating physician whenever the advanced practice registered nurse or physicians assistant changes treatment orders;

b. the advanced practice nurse or physicians assistant may not replace the physician in participating in patient care planning or in quality management activities; and

c. the treating physician shall be notified and direct the care of patient medical emergencies.

H. Patient Care Technician (PCT) or Dialysis Technician

1. Qualifications include basic general education (high school or equivalent) and dialysis training as specified in §8441.C.

2. Responsibilities include:

a. performing patient care duties only under the direct and on-site supervision of qualified registered nurses;

b. performing only those patient care duties that are approved by facility management and included in the policy and procedure manual; and

c. performing only those patient care duties for which they have been trained and are documented as competent to perform.

I. Reuse Technician

1. Qualifications. Basic general education (high school or equivalent), facility orientation program, and completion of education and training to include the following:

a. health and safety training, including universal precautions;

b. principles of reprocessing, including dangers to the patient;

c. procedures of reprocessing, including pre-cleaning, processing, storage, transporting, and delivery;

d. maintenance and safe use of equipment, supplies, and machines;

e. general principles of hemodialysis and in-depth information on dialyzer processing; and

f. competency certification on a biannual basis by a designated facility employee.

2. Responsibilities. The reuse technician is responsible for the transport, cleaning, processing, and storage of dialyzers to limit the possibility of cross contamination, and to avoid improper care of multiple use dialyzers.

3. Any technician or professional staff who performs reprocessing shall have documented training in the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2198 (October 2002).

Subchapter D. Patient Care

§8455. Patient's Rights

A. Facilities are required to develop, post, and implement rules and policies that protect the rights of patients and encourage patient responsibility.

1. The facility shall have an operational/documentated patient advice process in place that gives feedback to the administration of the facility.

B. Patient's Rights. Each facility shall develop and implement policies that protect the rights of their patients including, but not limited to, the right to:

1. be fully informed of rights, responsibilities and all rules governing conduct related to patient care and services;
2. be fully educated and supported concerning their illness;
3. adequate, safe and efficient dialysis treatment;
4. protection from unsafe and/or unskilled care by any person associated with the facility;
5. protection from unqualified persons providing services under the auspices of treatment;
6. consideration and respect toward the patient, family and visitors;
7. timely resolution of problems or grievances without threat or fear of staff intimidation or retaliation;
8. protection of personal property approved for use by the facility; and
9. protection from retaliation for the exercise of individual rights.

C. Grievance Procedure. The facility must have a grievance process and must indicate who the patient can contact to express a grievance. Records of all grievances, steps taken to investigate them, and results of interventions must be available to surveyors upon request. It is recommended that the facility appoint a grievance committee with patient representation to resolve major or serious grievances.

D. Abuse, Neglect, and Exploitation

1. The facility is responsible for taking necessary action to protect patients from an employee accused of abuse, neglect, or exploitation, for referring any licensed personnel to their respective professional boards, and/or contacting local authorities for investigation when indicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002).

§8457. Treatment Services

A. The facility must provide outpatient dialysis services as well as adequate lab, social, and dietetic services to meet the needs of ESRD patients. The facility must provide one or both of the following services.

1. Hemodialysis Ca method of dialysis in which blood from a patient's body is circulated through an external device or machine and then returned to the patient's bloodstream.

2. Peritoneal Dialysis Ca procedure that introduces dialysate into the abdominal cavity to remove waste products through the peritoneum (a membrane which surrounds the intestines and other organs in the abdominal cavity).

B. In addition, the following services may be provided by a facility.

3. Home Training C home visits, teaching, and professional guidance to teach patients to provide self-dialysis.

4. Home Support C provision of professional support to assist the patient who is performing self-dialysis.

B. Dialyzer Reprocessing. Reuse shall meet the requirements of 42 CFR. §405.2150. Additionally, the facility shall:

1. develop, implement, and enforce procedures that eliminate or reduce the risk of patient care errors, including but not limited to, a patient receiving another patient's dialyzer, or a dialyzer that has failed performance checks;
2. develop procedures to communicate with staff and to respond immediately to market warnings, alerts, and recalls;
3. develop and utilize education programs that meet the needs of the patient and/or family members to make informed reuse decisions; and
4. be responsible for all facets of reprocessing, even if the facility participates in a centralized reprocessing program.

C. Water treatment shall be in accordance with the American National Standard, Hemodialysis Systems published by the Association for the Advancement of Medical Instrumentation (AAMI Standards) and adopted by reference 42 CFR. §405.2140.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002).

§8459. Treatment Requirements

A. Admission

1. Each facility shall develop and implement written criteria to apply when any patient is referred for dialysis treatment or seeks admission, to include:

- a. payment guidelines, and alternate resources;
 - b. exceptions to apply when the patient would have to travel great distances, or suffer undue hardship to be treated at another facility; and
 - c. consideration of the patient's health and welfare.
2. Each facility shall develop a process that includes:
- a. perpetual logging of applicants to assure that all patients are treated equally and offered equal access;
 - b. referral to appropriate facilities or outside resources;
 - c. contracts with those patients who have a history of problems at other facilities, such as disruptive, threatening and abusive behavior to staff or other patients; and
 - d. professional interaction with other facilities when a patient has financial or behavior problems that cannot be resolved.

B. Patient Care C Miscellaneous

1. Patients must be informed whenever there is an error or incident that exposes them to an infectious illness or the potential for death or serious illness.

2. Facility staff should inform patients of current changes in the dialysis field when those changes could positively or negatively affect the patient.

C. Discharge/Transfer

1. Each facility shall develop and implement written criteria to apply when a patient is discharged without consent to include:

- a. reason for discharge (such as, non-compliance or illegal behavior);
- b. progressive procedures to assist the patient in making improvements;
- c. assistance to aid the patient in finding a new facility; and
- e. evaluation of each situation to improve outcomes.

2. A written, patient specific discharge process plan shall be accessible that provides reasonable protection and continuity of services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002).

§8461. Patient Records.

A. The facility is required to maintain a clinical record according to current professional standards for each patient.

1. This record shall:

- a. contain all pertinent past and current medical, psychological, social and other therapeutic information, including the treatment plan;
- b. be protected from unauthorized persons, loss, and destruction; and
- c. be a central location for all pertinent patient information and be easily accessible to staff providing care.

2. Patient records can be copied and/or transferred from one facility to another provided that the patient signs the authorization for transfer of the records and provided that confidentiality of information is strictly enforced.

3. Patient records shall be maintained at the facility where the patient is currently active and for six months after discharge. Records may then be transferred to a centralized location for maintenance in accordance with standard practice and state and federal laws.

4. Confidentiality. Records shall:

- a. be inaccessible to anyone not trained in confidentiality, unless they are granted access by legal authority such as surveyors, investigators, etc.; and
- b. not be shared with any other entity unless approved in writing by the patient, except in medical emergencies.

5. Record Keeping Responsibility. A person who meets or exceeds the federal requirements, shall be designated as responsible for the patient records.

6. Contents. Patient records shall accurately document all treatment provided and the patient's response in accordance with professional standards of practice. The minimum requirements are as follows:

- a. admission and referral information, including the plan/prescription for treatment;
- b. patient information/data - name, race, sex, birth date, address, telephone number, social security number, school/employer, and next of kin/emergency contact;
- c. medical limitations, such as major illnesses and allergies;
- d. physician's orders;
- e. psycho-social history/evaluation; and
- f. treatment plan. The plan is a written list of the patient's problems and needs based on admission information and updated as indicated by progress or lack of progress. Additionally, the plan shall:
 - i. contain long and short term goals;
 - ii. be reviewed and revised as required, or more frequently as indicated by patient needs;
 - iii. contain patient-specific, measurable goals that are clearly stated in behavioral terms;
 - iv. contain realistic and specific expected achievement dates;
 - v. indicate how the facility will provide strategies/activities to help the patient achieve the goals;
 - vi. be followed consistently by all staff members; and
 - vii. contain complete, pertinent information related to the mental, physical, and social needs of the patient.
- g. diagnostic laboratory and other pertinent information, when indicated;
- h. progress notes by all disciplines; and
- i. other pertinent information related to the individual patient as appropriate.

7. Computer data storage of pertinent medical information must:

- a. meet the above criteria;
- b. be easily retrievable and accessible when the patient is receiving dialysis; and
- c. be utilized by care givers during dialysis treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2202 (October 2002).

David W. Hood
Secretary

0210#062

RULE
Department of Labor
Office of Workforce Development

Customized Training Fund
(LAC 40:XVI.105)

In accordance with R.S. 49:905 et seq. that the Louisiana Department of Labor, pursuant to authority vested in the Department by R.S. 23:1514 and in accordance with applicable provisions of the Administrative Procedure Act, has amended rules governing the workforce development training account, LAC 40:XVI.105, to provide for the requirements for approval of applications requesting funds in excess of five percent of the available funds during a fiscal year.

Title 40
LABOR AND EMPLOYMENT
Part XVI. Customized Training

Chapter 1. Workforce Development Training Fund

§105. Criteria

A. - B. ...

C.1. No single employer or consortium shall receive training funds more than once in a 24-month time period. No single employer or consortium shall receive more than five percent of the total funds available to the program during a fiscal year. An employer with multiple operation sites and a single unemployment insurance tax identification number shall be limited to a single application which may encompass training at the various sites, as long as the amount awarded under the application does not exceed the maximum award amount. When an employer has more than one site and each site maintains a different unemployment insurance tax identification number, the employer may apply for a separate training award under each tax identification number.

2. An employer or consortium can request a grant award in excess of five percent of the total funds available to the program in a fiscal year. Such grant award may be approved at the discretion of the Secretary of Labor when the employer or consortium submits satisfactory documentation which allows for a determination that the training provided to employees of the employer or consortium will result in a substantial economic impact in the state. In addition, the employer or consortium's application must meet the following conditions.

a. The wages of individuals to be trained with the funds will be increased at the completion of the training.

b. The additional funds will be used to allow for a significant increase in the number of individuals to be trained.

c. The employer or consortium will provide a dollar-for-dollar match of the funds provided in the grant award to assist with the total cost of the training, any activities related to the grant award or any economic development activities that can be verified by statistical data from a recognized state or federal source.

D. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1514.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workforce Development, LR 25:1143 (June 1999), amended LR 26:1629 (August 2000), LR 28:2203 (October 2002).

Dawn Romero Watson
Secretary of Labor

0210#036

RULE
Office of Public Safety and Corrections
Board of Private Security Examiners

Company Licensure Requirements; Application
Procedure; Security Officer Registration
Requirements; and Firearm Training
(LAC 46:LIX. 201, 203, 301, and 405)

Under the authority of the Private Security Regulatory and Licensing Law, R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the executive secretary has amended the Louisiana State Board of Private Security Examiners Regulations, LAC 46:LIX:201, 203, 301, and 405, as follows.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LIX. Private Security Examiners

Chapter 2. Company Licensure

§201. Qualifications and Requirements for Company Licensure

A. - E. ...

1. two sets of classifiable fingerprints on FBI fingerprint cards with the appropriate processing fee of the applicant or qualifying agent and/or of each officer, partner or shareholder (except for shareholders of publicly traded corporations);

E.2 - L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:847 (October 1989), LR 18:190 (February 1992), LR 23:588 (May 1997), LR 26:1068 (May 2000), LR 28:96 (January 2002), LR 28:2203 (October 2002).

§203. Application Procedure

A. - A.7.e. ...

f. two sets of classifiable fingerprints on FBI fingerprint cards with the appropriate processing fee;

g. - j. ...

8. two classifiable sets of prints on FBI fingerprint cards with the appropriate processing fee for the applicant, or of the manager, of each officer, partner or shareholder (except for shareholders of publicly traded corporations);

A.9. - H. ...

I. Renewal Provisions

1. A \$200 annual renewal fee, along with two FBI fingerprint cards and the appropriate processing fee for each person required to submit FBI fingerprint cards with the original application or who has subsequently become associated with the applicant in a capacity which would

require submission of fingerprint cards for such person under these rules, must be submitted to the board 30 days prior to the expiration date of the license. If there have been any changes in the status of the company, then a new company application must also be submitted, along with a \$20 application fee.

J. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:752 (December 1987), amended LR 15:12 (January 1989), LR 15:847 (October 1989), LR 26:1070 (May 2000), LR 28:97 (January 2002), LR 28:2203 (October 2002).

Chapter 3. Security Officer Registration

§301. Qualifications and Requirements for Security Officer Registration

A. - D.2. ...

3. non-refundable application fee and fingerprint processing fee;

4. if a resident alien, copies of INS registration papers and completed Employment Eligibility Verification (Form I-9) together with identification documents submitted therewith;

5. if a U.S. citizen, copy of completed Employment Eligibility Verification (Form I-9) together with identification documents submitted therewith;

6. copy of photo I.D.; and

7. if applicant has worked less than 20 calendar days, documentation must nevertheless be submitted, but without the required fees if a termination form is included showing the dates worked.

E. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:753 (December 1987), amended LR 15:11 (January 1989), LR 13:846 (October 1989), LR 18:191 (February 1992), LR 23:588 (May 1997), LR 26:1072 (May 2000), LR 27:1241 (August 2001), LR 28:2204 (October 2002).

Chapter 4. Training

§405. Firearms Training

A. - E.3. ...

4. shotgun;

5. 40 caliber weapon, minimum 4-inch barrel.

F. - H.2.d. ...

I. Security officers are prohibited from carrying rifles, except when requested in writing the executive secretary on a case-by-case basis may authorize the carrying of a semiautomatic rifle in the event of a national security emergency or public safety necessity. Denial by the executive secretary is appealable to the board. Security officers shall be required to complete the training required in Section 405.J before they may carry a semiautomatic rifle when authorized by the executive secretary.

J. Semiautomatic Rifle Proficiency Course. The semiautomatic rifle proficiency course shall have the following requirements.

1. Training in use of a semiautomatic rifle is to be taught only if the security officer is required to carry a semiautomatic rifle in the performance of his duties.

2. Security officer shall qualify with a semiautomatic rifle by firing the 100-yard course of fire specified by the

National Rifle Association or a nationally recognized equivalent course of fire approved by the board. Qualifying score shall be an accumulated total of 80 percent of the maximum obtainable score.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18:192 (February 1992), amended LR 23:588 (May 1997), LR 26:1073 (May 2000), LR 27:1241 (August 2001), LR 28:2204 (October 2002).

Wayne R. Rogillio
Executive Secretary

0210#025

RULE

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

Wrap-Around Child Care Program
(LAC 67:III.Chapter 52)

The Department of Social Services, Office of Family Support, has repealed Title 67, Part III, Chapter 52, the Wrap-Around Child Care Program.

The agency implemented this program effective June 1, 2000. Whereas, the program has had limited participation and has not served the public as originally intended, the agency does not anticipate extending or renewing contracts beyond the 01/02 State Fiscal Year. The repeal has formally terminated the program effective at publication of this final Rule.

Title 67

SOCIAL SERVICES

Subpart 12. Child Care Assistance

Chapter 52. Wrap-Around Child Care Program

§5201. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:429 (March 2001), repealed LR 28:2204 (October 2002).

§5202. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:429 (March 2001), amended LR 27:1560 (September 2001), repealed LR 28:2204 (October 2002).

§5203. Conditions of Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:429 (March 2001), amended LR 27:1560 (September 2001), repealed LR 28:2204 (October 2002).

§5205. Income Limits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:430 (March 2001), amended LR 27:1560 (September 2001), repealed LR 28:2204 (October 2002).

§5207. Rights and Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:430 (March 2001), repealed LR 28:2205 (October 2002).

§5209. Head Start Grantees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:430 (March 2001), amended LR 27:1560 (September 2001), repealed LR 28:2205 (October 2002).

§5211. Payments Effective May 1, 2001

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:431 (March 2001), amended LR 27:1561 (September 2001), repealed LR 28:2205 (October 2002).

Ann S. Williamson
Assistant Secretary

0210#093

RULE

Department of Treasury

Credit Card Acceptance by State Agencies
(LAC 71:I.903 and 911)

Under the authority of R.S. 49:316.1, the Department of the Treasury has amended §903 and §911 of the Credit Card Acceptance in accordance with the Administrative Procedure Act, R.S. 950 et seq.

**Title 71
TREASURY**

Part I. Treasurer

Chapter 9. Credit Card Acceptance by State Agencies

§903. Definitions

* * *

State Charge Ca fee established by the treasurer in the form of a uniform dollar amount or percentage assessed for each card or device and for each method of conducting transactions to be accepted by state entities.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:736 (May 2001), amended LR 28:2205 (October 2002).

§911. State Charge

A. Treasury, from time to time, will negotiate with card providers for a fee for processing payment card transactions with state entities. Treasury will seek to achieve reasonable fees that reflect the economies of scale achieved by negotiation. The fees may be composed of a percentage

and/or a specific dollar amount as determined by treasury and the card providers.

B. The state charges shall encompass these various fees charged by card providers and include other applicable fees including fees by third party processors, or fees assessed by providers of Internet payment processing services. The state charges shall be in the form of a uniform dollar amount or percentage assessed for each card or device and for each method of conducting transactions to be accepted by state entities. The state charges will be revised from time to time and the treasurer shall notify state entities of the revised state charges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:737 (May 2001), amended LR 28:2205 (October 2002).

Ron J. Henson
First Assistant State Treasurer

0210#026

RULE

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

Coastwide Nutria Control Program (LAC 76:V.123)

The Wildlife and Fisheries Commission has adopted a Rule to establish a coastwide nutria control program.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§123. Coastwide Nutria Control Program

A. The Department of Wildlife and Fisheries does hereby establish regulations governing participation in the coastwide nutria control program. The administrative responsibility for this program shall rest with the department secretary; the assistant secretary, Office of Wildlife; and the Fur and Refuge Division.

1. The coastwide nutria control program objective is to provide economic incentive, by payment of \$4 per nutria tail to participants, to encourage the harvest of up to 400,000 nutria annually from coastal Louisiana. For the purpose of this program, coastal Louisiana is bounded on the north by Interstate 10 from the Louisiana-Texas line to Baton Rouge, Interstate 12 from Baton Rouge to Slidell, and Interstate 10 to the Louisiana-Mississippi line.

2. Participant Application Process

a. Participants must acquire a valid Louisiana trapping license.

b. Participants must submit a completed nutria control program participant application to the department or its contractor.

c. To be considered complete, the application must contain the following information: name, address, telephone number, social security number, and trapping license number of applicant; tax receipt and a description of property to be trapped/hunted (acres, parish, township, range, section); name, address, and telephone number of landowner (private or public); signature of participant; and signature of

landowner or designated representative indicating permission to hunt or trap nutria on the described property.

d. For applications determined to be complete and valid, the participant will be notified by mail that his/her registration is finalized and a nutria control program registration number will be issued.

e. The participant must indicate if an assistant will be delivering tails on his behalf to a collection center and the participant must provide the name of the assistant(s) on the application.

f. Applications submitted to the department or its contractor by October 1 shall be processed by the opening of trapping season. Applications submitted to the department or its contractor after October 1 shall be processed in the order received.

g. Applications listing only waterbodies, without signature of an adjacent landowner or designated representative, shall be considered incomplete.

h. Applications determined to be incomplete or invalid will be returned to the applicant with an explanation as to why registration could not be finalized.

3. Harvest of Nutria

a. Participants must possess a valid trapping license and a nutria control program registration number.

b. Only nutria harvested during the open trapping season, from coastal Louisiana and taken from property permitted can be included in this program.

c. Nutria may be taken by any legal method except that if taken with a shotgun, steel shot must be used.

d. Participants are required to remove carcasses from the trapping/hunting area or if carcasses are not sold whole, they must be placed in such a manner as to prohibit feeding on the carcasses by birds, including southern bald eagles. Carcasses may be buried, placed in heavy overhead vegetation or concealed by any other means necessary to prevent consumption by birds.

4. Collection of Nutria Tails for Payment

a. Collection stations will be established across coastal Louisiana by the department or its contractor.

b. Evidence of nutria harvested shall be in the form of delivering severed nutria tails to a collection station during a designated period. Collections will begin on or about November 20. Specific dates and times of collections will be established and advertised for each station.

c. Participant or a designated assistant must present the nutria control registration number and proper identification to the department contractor.

d. Participant or designated assistant shall present to the department contractor only fresh or well-preserved (iced, frozen, salted) nutria tails in a manner that allows counting of individual tails (e.g., tails cannot be frozen together in a block). Only whole tails, greater than 7 inches in length will be accepted.

e. Participant shall declare parish, section, township, and range in coastal Louisiana where animals were taken and indicate method of take and carcass use. Tails from animals taken from outside of the participants permitted property shall not qualify for payment in this program.

f. Participant shall sign the receipt/voucher provided by the department contractor to acknowledge

number of tails presented and accuracy of information provided.

5. Violation of any part of these regulations is a class 2 violation and conviction may result in disqualification from the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 28:2205 (October 2002).

Thomas M. Gattle, Jr.
Chairman

0210#040

RULE

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

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

The Wildlife and Fisheries Commission has amended the rules governing white-tailed deer importation.

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 1-800-442-2511. 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. No person shall receive or possess deer or elk imported or transported in violation of this Rule. Any person accepting delivery or taking possession of deer or elk from another person has a duty to review and maintain bills of

sale, bills of lading, invoices, and all other documents which indicate the source of the deer or elk.

D. 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 28:2206 (October 2002).

Thomas M. Gattle, Jr.
Chairman

0210#041

RULE

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

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

The Wildlife and Fisheries Commission has amended rules governing disposal of confiscated deer and elk.

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

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

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

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

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 28:2207 (October 2002).

Thomas M. Gattle, Jr.
Chairman

0210#042