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# Executive Orders

## EXECUTIVE ORDER DCT 82-19

WHEREAS, rape is an act of violence which has become a problem of tragic national importance; and

WHEREAS, I have, by virtue of Executive Order No. 82-15, created a Task Force on Rape to study the facts surrounding the problem and make recommendations for legislation to combat the problem; and

WHEREAS, it is vital to the mission of the task force that it have sufficient time to study relevant information regarding the tragedy of rape and prepare responsible and workable legislation;

NOW, THEREFORE, I, DAVID C. TREEN, Governor of the State of Louisiana, by virtue of the authority vested in me, pursuant to the Constitution and applicable statutes of the State of Louisiana, do hereby recreate the Governor's Task Force on Rape.

Said task force shall be composed of those members appointed by the Governor prior to September 30, 1982.

Said task force shall make recommendations to the Governor prior to November 30, 1982, and shall disband at that time unless specifically recreated by executive order.

Members of said task force shall receive no compensation for attending meetings of the task force but shall be reimbursed for those necessary expenses incurred in attending meetings of the task force. Such reimbursements shall be made in compliance with state travel regulations.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 30th day of August, A.D., 1982.

David C. Treen  
Governor of Louisiana.

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture Seed Commission

The Department of Agriculture, Seed Commission, has determined that the absence of procedures for the certification of bulk seed has created a severe economic burden among farmers of Louisiana, particularly among wheat farmers who cannot now purchase certified wheat seed in bulk. In order to implement procedures whereby wheat farmers can purchase certified wheat in bulk for crops which must be planted within the next few weeks, the Department of Agriculture, Seed Commission, has adopted the following Bulk Seed Certification regulations on an emergency

basis:

1. Bulk seed certification shall be restricted as follows:

a) Only certification of small grain, soybean, and rice seed in bulk shall be permitted.

b) Bulk seed certification shall be limited to the certified class.

c) Seed certified in bulk quantities and marketed in bulk shall not be eligible for recertification.

d) Sales of certified seed in the bulk can only be made by the grower-applicant directly to the consumer who will be planting the seed.

e) Upon request of grower, a certificate for each approved lot will be issued from the Louisiana Department of Agriculture, Office of Agronomics and Quarantine Programs, to the grower-applicant covering the entire quantity of seed certified in the bulk. A charge of six cents per bushel will be made at the time the certificate is issued. After a bulk certificate is issued on a lot, a bulk retail certificate must be used for each sale of the lot certified in the bulk.

f) No certification tags will be issued for seed sold in bulk.

g) Seed from a lot certified as a bulk quantity, for which a certificate has been issued, may be tagged by the grower-applicant, if an official sample is drawn from bagged seed and meets certified seed standards. Tags will be issued for such situations at normal cost.

2. Official samples

a) Official samples to determine eligibility for certification must be drawn from the cleaned seed after conditioning and/or treating.

b) Maximum size of bulk lots will be limited to the quantity approved for drawing official samples, i.e., depth sampling equipment will operate, working room to operate equipment, and access to all parts of the storage by official inspectors.

c) Complete identity of all bulk lots through the use of lot numbers and bin designations must be maintained until the entire lot is disposed of.

d) Once official samples are drawn, no additional seed quantities may be added to the lot.

3. Approved Storage for Bulk Certified Seed

a) In order to store bulk seed, detailed arrangements must be made with and approved by the Louisiana Department of Agriculture, Office of Agronomic and Quarantine Programs, before conditioning.

b) Genetic identity and purity must be maintained throughout storage such that no mixtures will occur.

c) Storage bins must be constructed so that bin openings can be kept closed to prevent contamination.

4. Violations or abuses of intent regarding bulk merchandising of certified seed in any form will result in the automatic suspension of this privilege for one subsequent crop year.

Notice of the intention of the Seed Commission to adopt the above Bulk Seed Certification Program regulations on a permanent basis was published in the August 20, 1982, issue of the *Louisiana Register*. The public hearing for consideration of these regulations and other proposed amendments to the Rules and Regulations of the Seed Commission will be conducted on October 13, 1982, at 1 p.m. at the State Capitol, 21st Floor, Baton Rouge.

Copies of other proposed amendments to be considered at the public hearing on October 13, 1982, may be secured by writing Barby Carroll, Office of Agriculture and Environmental Sciences, Department of Agriculture, Box 44153, Baton Rouge 70804, or in person at his office in the Harry D. Wilson Building on the LSU Campus, Baton Rouge.

Bob Odom  
Commissioner

## DECLARATION OF EMERGENCY

### Department of Commerce Racing Commission

The Commission, pursuant to the authority contained in R.S. 49:953 B, adopted the Emergency Rule, LAC 11-6:57 et seq. The Commission at its meeting on August 26, 1982 by unanimous resolution made a finding that the public welfare required the adoption of a Rule of racing to provide for the exclusion and ejection of certain categories of persons from the grounds of a racing association. Further that Act 779 of 1981 mandates that this Commission adopt such a Rule. Pursuant to R.S. 4:141 et seq, and particularly, R.S. 4:142 stating the Legislative purpose of the racing statute, it is incumbent on the Louisiana State Racing Commission to adopt a Rule of racing so as to place under its control and jurisdiction the exclusion and ejection from the grounds of a racing association certain categories of people.

A complete text of LAC 11-6:57 may be found in this issue under Rules.

Ray Vanderhider  
Chairman

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

The State Board of Elementary and Secondary Education, as its meeting of August 26, 1982, exercised those powers conferred by the emergency provisions of the Administrative Procedure Act R.S. 49:953B and adopted the following as emergency Rules:

1. The Civil Service approval date for reclassified personnel shall be the effective date of salary adjustment for the new position.

This emergency adoption will enable classified personnel receiving a reclassification to receive the increase in salary immediately rather than having to wait the customary 60 days.

2. Revise the wording in the certification requirements for Parish or City School Supervisors of Special Education, Bulletin 746, Page 74, Paragraphs (2) and (3) to read as follows:  
Page 74

Parish or City School Supervisor/Director of Special Education\*

2. Have graduate training in special education including at least one course in administration/supervision of special education, and hold generic certification in special education and/or fulfill certification requirements in two areas of exceptionality as specified in Bulletin 746. In lieu of the second area of exceptionality, a person must be certified or hold a license or credential requirements in a related service area as noted in the Regulations of Act 754.

3. Have had five years of successful professional experience, at least three of which must have been in special education. For the purpose of this part, special education shall be defined as experience in any of the identified positions recognized by the State Board of Elementary and Secondary Education in Appendix I of Act 754 Regulations. The classroom experience shall have been as itinerant, resource or self-contained special class teacher as verified on the annual school report.

\* This title will apply to all persons, regardless of title, who serve in this capacity.

3. Revise the wording in the certification requirements for Special School Principal, Bulletin 746, Page 75, Paragraph (3) to

read as follows:

Page 75  
Special School Principal

3. Have had five years of successful professional experience, at least three of which must have been in special education.

This emergency adoption of changes on pages 74 and 75 of Bulletin 746 will enable school systems to better staff the Special Education Program with certified personnel for the 1982-83 school session. The changes requested recognize a broader educational background as appropriate experience for certification.

James V. Soileau  
Executive Director

## DECLARATION OF EMERGENCY

### Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, has exercised the emergency provision of the Administrative Procedure Act R.S. 49:953B, to amend its definition of resources under the Medical Assistance (Title XIX) Program effective August 17, 1982, to specify that burial plots or prepaid burial contracts are not resources for the purposes of determining eligibility for Medical Assistance. This policy applies only to a burial plot or prepaid burial contract intended for the use of an applicant for, or recipient of, Medical Assistance; or to such plots or contracts for the use of persons whose resources, if any, are deemed to the Medical Assistance applicant/recipient.

The definition of income is being amended in regard to burial plots or prepaid burial contracts as follows:

1) The receipt of a burial plot or prepaid burial contract as a gift or inheritance shall not be counted as income;

2) Installment payments on burial plots or contracts made by a third party directly to the provider of funeral services and burial items on behalf of the Medical Assistance applicant/recipient shall not be counted as income. However, if money is given directly to the applicant/recipient, it is counted as income;

3) Any increase in the value of a burial plot or contract or any interest derived from funds paid toward the cost of a burial contract shall not be counted as income. However, if interest is paid directly to the Medical Assistance applicant/recipient, rather than made a part of the contract, it shall be considered under the policies applicable to interest income;

4) The proceeds from the sale of a burial plot or contract shall be counted as income in the month received and if retained, shall be considered a resource in the following month.

The above changes in policy are necessary so that applicants and recipients of Medical Assistance who purchase burial plots do not risk losing their eligibility for Title XIX benefits. These Rule changes bring the Medical Assistance Program into compliance with Interim Final regulations published in the August 17, 1982 issue of the *Federal Register* (Volume 47, No. 159, 35948-35949) and in teletype message from the Social Security Administration in Baltimore, Maryland received August 23, 1982.

Roger P. Guissinger  
Secretary

**DECLARATION OF EMERGENCY**

**Department of Health and Human Resources  
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, has exercised the emergency provision of the Administrative Procedures Act, R.S. 49:953B, to increase nursing home rates, effective with the August, 1982, payment for July, 1982, services, to the following amounts:

Level of Care	Daily Rate	Monthly Rate
Skilled Nursing Facilities	\$34.80	\$1,058.50
Intermediate Care Facilities I	29.76	905.20
Intermediate Care Facilities II	23.87	726.05

This action will allow the Medical Assistance Program to increase payments to nursing homes on a timely basis.

Federal Regulation 42 CFR 447.273 and the Title XIX State Plan specify that the Medicaid agency must pay for long term care facility services on a reasonable cost-related basis. The rate is set based on the sixtieth percentile by level of care.

Roger P. Guissinger  
Secretary

**DECLARATION OF EMERGENCY**

**Department of Health and Human Resources  
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953B to amend the Medical Assistance Program's policy for payment for in-hospital care effective July 1, 1982, to add the following exception:

Vendor payment for inpatient hospital care in a short-term general hospital is limited to 15 days in a calendar year with the following exception:

Hospitals serving a disproportionate number of low-income patients will not be limited by the 15 day restriction and will have all allowable costs for approved services reimbursed. A hospital serving a disproportionate number of low-income patients is defined as any short-term general hospital in which the combination of Medicaid inpatient days and indigent inpatient days represents 30 percent or more of the total inpatient days for that hospital's most recent fiscal year. An indigent inpatient day is defined as a day of care consumed by a single individual whose monthly income is \$200 or less, an individual from a two-member family with a monthly income of \$225 or less, a three-member family with a monthly income of \$250 or less, a four-member family with an income of \$275 or less, and so forth, with \$25 added to the monthly limit for each additional member of the family.

This Rule change is necessary to allow payment to those hospitals meeting the above qualifications, for the provision of in-patient hospital care to eligible Title XIX recipients. Such action will prevent imminent peril to the health, safety and welfare of those individuals whose need for inpatient hospital care exceeds 15 days per calendar year.

Roger P. Guissinger  
Secretary

**DECLARATION OF EMERGENCY**

**Department of Health and Human Resources  
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, has exercised the emergency provision of the Administrative Procedure Act R.S. 49:953B to provide for reimbursement to providers for hyperalimentation therapy (parenteral) effective July 1, 1982. This Rule change will enable the Medical Assistance Program to prevent imminent peril to the health and welfare of those individuals with severe pathology of the alimentary tract, which precludes normal oral feeding. Parenteral hyperalimentation therapy is necessary to adequately meet the nutritional requirements of such individuals.

This Rule change is in concurrence with federal regulation 42CFR 440.120.

Roger P. Guissinger  
Secretary

**DECLARATION OF EMERGENCY**

**Department of Health and Human Resources  
Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953B, to impose a maximum limit on the reimbursement rate for certain Home and Community Based Services provided through the Medical Assistance Program effective July 20, 1982. Payment to providers by the Department of Health and Human Resources on behalf of eligible recipients shall be determined individually on the basis of cost associated with providing the services. However, in no instance will the reimbursement to providers for the provision of Adult Day Health, Homemaker and Habilitation services exceed 80 percent of the total monthly Medicaid rate that normally would be paid to a Long Term Care Facility for a comparable level of care for such a person in a Long Term Care Facility.

This Rule change is necessary for the Louisiana Medical Assistance Program to comply with Act 715 (House Bill No. 1072) of the 1982 Regular Legislative Session. As policy now stands, it will be both costly and administratively burdensome for the Department of Health and Human Resources, Office of Family Security, participating providers, and eligible recipients, to utilize one set of reimbursement guidelines, policies and procedures for approximately 53 days and then be required because of Act 715, to utilize a different set of reimbursement guidelines, policies and procedures thereafter. As such a situation would be of imminent peril to the public health, safety, and welfare by impairing the development and delivery of Home and Community Based Services which provide an alternative to institutional care, the Department of Health and Human Resources, Office of Family Security, implements the above described Rule change.

Roger P. Guissinger  
Secretary

**DECLARATION OF EMERGENCY**  
**Department of Wildlife and Fisheries**  
**Wildlife and Fisheries Commission**

RESOLUTION

WHEREAS, after a meeting with U. S. Fish and Wildlife personnel in Washington D.C. pertaining to migratory bird seasons other than waterfowl, and

WHEREAS, tentative dates for the migratory bird seasons other than waterfowl were discussed with the Commission at the June 29, 1982 meeting, and

WHEREAS, we received the final notice from the U. S. Fish and Wildlife Service in July, the tentative dates of the June discussion were used in complying with Federal Seasons, and

WHEREAS, these dates were as follows:

		1982-83		
Doves:	Dates	Days	Bag Limit	Possession Limit
	NORTH ZONE			
	Sept. 4 - Sept. 19	16 days	12	24
	Oct. 16 - Nov. 7	23 days	12	24
	Dec. 11 - Jan. 10	31 days	12	24
	Total .....	70 days		
	SOUTH ZONE			
	Oct. 16 - Nov. 28	44 days	12	24
	Dec. 11 - Jan. 5	26 days	12	24
	Total .....	70 days		
Woodcock:	Dec. 11 - Feb. 13	65 days	5	10
Rails:	Sept. 18 - Sept. 26	9 days	15*	30
	Nov. 6 - Jan. 5	61 days	15*	30
	Total .....	70 days		
Gallinules:	Sept. 18 - Sept. 26	9 days	15	30
	Nov. 6 - Jan. 5	61 days	15	30
	Total .....	70 days		
Snipe:	Nov. 6 - Feb. 20	107 days	8	16
Teal:	Sept. 18 - Sept. 26	9 days	4	8

Shooting Hours: From ½ hour before sunrise to sunset daily, except that teal season shooting hours are sunrise to sunset.

\*Clapper and king rails: 25 daily bag and possession limits singly or in the aggregate for sora and Virginia rails.

NOW THEREFORE BE IT RESOLVED, that the Louisiana Wildlife and Fisheries Commission on this date of August 24, 1982, ratify the 1982-83 migratory bird seasons other than waterfowl as discussed and presented by the Game Division staff.

Jesse J. Guidry  
Secretary

**DECLARATION OF EMERGENCY**

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

**RESOLUTION**

1982-83 Waterfowl Season

WHEREAS, the United States Fish and Wildlife Service has established frameworks for the 1982-83 waterfowl hunting season, and

WHEREAS, the Louisiana Wildlife and Fisheries Commission must abide by these frameworks in setting waterfowl hunting seasons, NOW

THEREFORE BE IT RESOLVED that the following waterfowl hunting season dates are established by the Louisiana Wildlife and Fisheries Commission for the 1982-83 hunting season.

**Ducks and Coots**

West Zone	Nov. 6 - Dec. 5	30 days
	Dec. 18 - Jan. 11	25 days
East Zone	Nov. 20 - Dec. 5	16 days
	Dec. 18 - Jan. 20	34 days

**Geese**

West Zone	Nov. 6 - Dec. 5	30 days
	Dec. 18 - Jan. 26	40 days
East Zone	Nov. 20 - Dec. 5	16 days
	Dec. 18 - Feb. 9	54 days

**Special Scaup Season**

Jan. 21 - Jan. 31

Only in certain designated coastal waters to be identified in the Departmental waterfowl brochure.

BE IT FURTHER RESOLVED that all provisions of the frameworks established for waterfowl hunting by the United States Fish and Wildlife Service which are applicable to Louisiana are hereby adopted and made a part of the Louisiana waterfowl hunting regulations for the 1982-83 hunting season.

Jesse J. Guidry  
Secretary

# Rules

**RULE**

**Department of Commerce  
Cemetery Board**

**(La. R.S. 8:1 through 914, both inclusive)**

The following amendments to the Rules and Regulations of the Louisiana Cemetery Board which presently appear in Vol. I, No. 12, December 20, 1975, pages 519 through 525, both inclusive, having been previously submitted and approved as required by R.S. 49:954 and 968, are hereby promulgated.

1. Renumber present part 6 to read "Part 8 - Construction: Divisibility."
2. Add "Part 6 - Cemetery Care Fund; Merchandise Trust Fund."

**Section 1. Perpetual Care Trust  
Fund, payments to.**

After establishment of the permanent care trust fund when and as required by Chapter 7 of La. R.S. 9, Section 451-467, both inclusive, the amount to be deposited in the trust fund, which is a minimum of 10 percent of the gross receipts, less sales tax and interest or finance charges, if any, for the sale or conveyance of any interment space, but in no event less than 10 percent of the fair market value of each interment space conveyed, such fair market value to be determined on the basis of the current fair market value of comparable interment space in the same cemetery, shall be delivered to the trustee not later than 90 days after the end of each quarter of the cemetery authority's tax reporting year.

In the event the purchase price of any such interment space not be fully paid and thereafter be re-sold, the cemetery authority shall be entitled to credit for the amount which in the interim had been deposited in the trust fund with respect to such space.

No deposit to the permanent care trust fund shall be required in those instances in which a cemetery authority uses or conveys an interment space for an indigent interment, provided the space so used or conveyed is contained within a special area or section of the cemetery set aside and used solely for indigent interments.

**Section 2. Remittance by the Trustee  
to the Cemetery Authority**

All income received by Trustees of Cemetery Care Funds, which is not remitted to the Cemetery Authority within 120 days after the end of the latest tax reporting year of the Cemetery Authority, owning or operating a cemetery for which the trust fund is maintained, shall become for all purposes part of, and added to, the corpus of the principal of the trust.

Section 4. The Board shall have the right to make on-site inspections and examinations of the endowment care funds and the merchandise trust funds of a cemetery authority, or other legal entity, its books and records pertaining thereto and its cemetery or mausoleum, and its contracts for sales of personal property and/or services for future delivery, at any time during normal working hours, and by any employee or other person designated by the Board so to do.

By way of illustration as to the extent of such on-site inspections, the cemetery authority shall:

As to Endowment Care Funds:

1. Produce copies of all contracts and deeds, for inspection, relative to the last reporting form and since the last examination, as they pertain to the gross selling interment prices of spaces deeded during such period or on the gross receipts from contracts of sales during period.
2. Provide documentation from the trustee as to receipt of the deposit to the Perpetual Care Trust Fund of the required 10 percent deposit of gross receipts from all sales made with a provision for perpetual care during the period covered by the examination.
3. Provide access to its interment records to ascertain that proper information is being documented, including but not limited to the name of each deceased person, date of cremation or interment, and name of funeral director.
4. Provide copies of its contracts and deeds for review so it may be ascertained if perpetual care and the required 10 percent deposit is specific in each document presented to the consumer.

As to Merchandise Trust Funds:

1. Produce for inspection and review copies of all contracts for sales of personal property and/or services for future delivery, relative to the last reporting form or since the last examination, as they pertain to the sales of personal property and/or services during period.
2. Provide documentation from the trustee as to receipt of

the required deposit to the Merchandise Trust Fund of 50 percent of the gross receipts, less sales taxes, on all such contracts for future delivery when delivery is to be made at an uncertain date or more than 120 days after receipt of final payment under any such contract.

3. Provide a copy of each of its contracts for sale of personal property and/or services for review so it may be ascertained if any of said documents specifies that delivery will be made within 120 days after receipt of final payment on contract and if not, that the cemetery authority or other legal entity has established a merchandise trust fund into which 50 percent of the gross receipts, less sales taxes, is being deposited.

During any such on-site inspection the representative of the Board shall:

1. Ascertain that the interment records are adequately protected from destruction by fire in that they are kept in a place of safekeeping.

2. Inspect the grounds and other facilities of the cemetery to determine if perpetual care maintenance is, in fact, being reasonably performed.

Add "Part 7 - Qualifications of Applicants for Certificates of Authority."

Section 1. R.S. 8:71 required the Board to determine whether applicants "are financially responsible, trustworthy, and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state." While no rigid specifications, particularly as to character, can be fashioned, some objective evidence of a lack of such qualifications should exist before an application is denied. Clearly, if the applicant is an individual who has, or is a firm, association or corporation any of whose officers, owners, directors or managerial personnel has or have:

1. Been convicted of a felony, or has
  2. Employed misrepresentation or deception in obtaining, renewing or reinstating a license or privilege from a public entity, or in seeking a certificate or license from this Board; or
  3. Used false or misleading advertising or solicitation in any business venture,
- the application should be denied unless the applicant produces evidence indicating complete rehabilitation.

Ms. Frances C. Mayeaux  
Administrative Director

## **RULE**

### **Department of Commerce Office of Financial Institutions**

Under authority granted by R.S. 6:237-B, the Commissioner of Financial Institutions issues the following amendment to the Adjustable Rate Mortgage Rule for the purpose of providing a means by which state charter banks may have authority consistent with that granted national banks by the Comptroller of the Currency Rules and Regulations 12 CFR, Part 29, which was published on Page 23948, Volume 47, No. 106 of the *Federal Register* dated June 2, 1982.

#### **AMENDMENT**

Notwithstanding any limitations imposed by R.S. 6:237 and 322, state chartered banks are hereby authorized to make, purchase, and participate in adjustable rate mortgage instruments authorized for national banks by the Comptroller of the Currency

Regulation 12 CFR, Part 29. For the information and guidance of state chartered banks, the Comptroller of the Currency Regulation is outlined below. The words "national" and "Comptroller of the Currency" have been changed to "state" and "Commissioner of Financial Institutions". Accordingly, the Office of Financial Institutions amends the Adjustable Rate Mortgage Rule to read as follows.

#### **ADJUSTABLE-RATE MORTGAGE INSTRUMENTS**

##### **1. Purpose**

This regulations is issued by the Office of Financial Institutions to establish Rules for state banks making or purchasing adjustable-rate loans secured by liens on one to four-family dwellings.

##### **2. Definition**

An adjustable-rate mortgage loan is any loan made to finance or refinance the purchase of and secured by a lien on a one to four-family dwelling, including a condominium unit, cooperative housing unit, or a mobile home, where such loan is made pursuant to an agreement intended to enable the lender to adjust the rate of interest from time to time. Adjustable-rate mortgage loans include loan agreements where the note and/or other loan documents expressly provide for adjusting the rate at periodic intervals. They also include fixed-rate loan agreements that implicitly permit rate adjustment by having the note mature on demand or at the end of an interval shorter than the term of the amortization schedule unless the bank has clearly made no promise to refinance the loan (when demand is made or at maturity) and has made the disclosure specified in 8 (d).

##### **3. General Rule**

Banks may make or purchase adjustable-rate mortgage loans only if they conform to the conditions and limitations contained in this Part. Banks may make or purchase adjustable-rate mortgage loans pursuant to this Part.

##### **4. Index**

Changes in the interest rate charged on an adjustable-rate mortgage loan must be linked to changes in the index specified in the loan documents, i.e., a one basis point (one basis point = .01 percentage point) change in the index must be translated into a one basis point change of the same direction in the contract interest rate except as otherwise provided in 5 (b). A bank may use as an interest rate index any measure of market rates of interest that is readily available to and verifiable by the borrower and is beyond the control of the bank. The index for an adjustable-rate mortgage loan shall be either single values of the chosen measure or a moving average of the chosen measure calculated over a specified period. The initial index value shall be the most recently available index value on the date that the lender commits to the initial interest rate on the loan. Subsequent interest rate changes shall be based on the most recently available index value at the date for notifying borrowers of impending changes in the interest rate.

##### **5. Rate Changes**

(a) Frequency of Changes. Interest rate changes on an adjustable-rate mortgage loan shall occur at intervals specified in the loan documents.

(b) Required and Permitted Rate Changes. Interest rate changes on adjustable-rate mortgage loans shall be subject to the following provisions:

(1) Interest rate increases permitted in accordance with this Part shall be at the option of the bank.

(2) Interest rate decreases warranted by decreases in the index shall be mandatory except to the extent they would exceed limitations established pursuant to 5(b) (3); to the extent that rate increases fully reflecting increases in the index have not been implemented by the bank, either at its option or because of limitations on interest rate adjustments as permitted in 5(b) (3); or to the

extent that the bank has previously voluntarily reduced the interest rate on an adjustable-rate mortgage loan.

(3) Banks offering adjustable-rate mortgage loans may establish in the loan documents limitations on maximum or minimum interest rate increases or decreases, minimum increments of interest rate increases or decreases, and procedures for rounding the interest rate on the loan to the nearest percentage point or some fraction thereof.

(4) Voluntary interest rate reductions not related to index changes and changes in the index that do not result in equal changes in the interest rate (including differences between changes in the index rate and changes in the interest rate due to rounding) shall, to the extent not offset by subsequent movements of the index, be carried over and be available at succeeding rate change dates.

(5) A bank may decrease the contract rate on an adjustable-rate mortgage at any time and by any amount beyond the decreases required by the Rules contained in this Part.

(c) Method of Rate Changes. Interest rate changes to an adjustable-rate mortgage loan may be implemented through changes in the amount of the installment payment or the rate of amortization or any combination of these two methods, according to a schedule agreed upon by the borrower and the bank in the loan documents or as agreed upon by the parties at the time of an interest rate change. Notwithstanding the foregoing, installment payments shall be required for an adjustable-rate mortgage loan that are sufficient to reduce the outstanding principal balance of the loan beginning no later than during the twenty-first year and are sufficient to amortize the entire principal of the loan without a substantial balloon payment by the end of the thirtieth year. These methods are permissible regardless of any state-law prohibitions on the charging of interest on interest. Such prohibitions are expressly preempted, provided the interest rate charged by the bank does not exceed the applicable usury limit, if any.

#### 6. Prepayment Fees

Banks offering or purchasing adjustable-rate mortgage loans may impose penalties for prepayments.

#### 7. Assumption

Banks offering or purchasing adjustable-rate mortgage loans that include due-on-sale clauses are not required to allow those loans to be assumed by new purchasers of the mortgaged property or to allow new purchasers to take title to such property subject to the lien of an adjustable-rate mortgage loan made pursuant to this Part, regardless of any limitations on the validity or enforceability of due-on-sale clauses found in state law, which limitations are expressly preempted. If a bank does allow such a loan to be assumed or a purchaser to take title to property subject to the lien of an adjustable-rate mortgage loan made pursuant to this Part, the interest rate and any other loan terms may be reset as of the date of assumption. In order for an adjustable-rate mortgage loan to qualify for the benefits of this Section, the loan note must contain a clause stating that the loan is due on sale or must contain some other provision indicating that the loan may be assumed or the property purchased subject to the bank's mortgage lien only at the bank's discretion.

#### 8. Disclosure

(a) A bank offering adjustable-rate mortgage loans shall disclose in writing on the earlier of the date on which the bank first provides written information concerning adjustable-rate mortgage loans available from the bank or provides a loan application form to the prospective borrower, the following items:

(1) The fact that the interest rate may change and a brief description of the general nature of an adjustable-rate mortgage loan;

(2) The index used, including the name of at least one readily available source in which it is published. If the index is

based on a cost of funds rate for any group of financial institutions subject to limitations on the interest they may pay certain classes of depositors, a bank must describe that fact and point out that the removal of interest rate ceilings will likely result in an upward bias on future movements of the index, regardless of movements in market interest rates;

(3) A 10-year series updated at least annually showing the values of the index on at least a semiannual basis, presented in a table. The table should show either single values of the measure of interest rates or an average of single values, consistent with the bank's adjustable-rate mortgage loan program;

(4) The frequency with which the interest rate and payment levels will be adjusted;

(5) The method used to calculate the initial monthly payment, if that payment differs from the fully amortizing payment;

(6) Any Rules relating to changes in the interest rate, installment payment amount, and/or increases in the outstanding loan balance;

(7) A description of the method by which interest rate changes will be implemented, including an explanation of negative amortization and balloon payments, if they may occur in connection with the loan;

(8) A statement, if appropriate, of the Rules or conditions relating to refinancing of short-term and demand mortgage loans, prepayment, and assumption;

(9) A statement, if appropriate, of fees that will be charged by the bank and/or any other persons in connection with the adjustable-rate mortgage loan, including fees due at loan closing, prepayment fees and fees that will be charged for interest rate or payment adjustments and a statement of when and how such fees will be charged;

(10) A schedule of the dollar amounts of the installment payments (principal and interest), and the outstanding loan balance at each payment adjustment date on a \$10,000 adjustable-rate mortgage that might occur under the bank's adjustable-rate mortgage loan program. The initial interest rate should be a commitment rate offered by the bank within the preceding 12-month period.

(b) At least 30 days and no more than 45 days before any interest rate change may take effect, the bank must notify the borrower in writing of the following items:

(1) The current and proposed new interest rate;

(2) The base index value and the index values upon which the current interest rate and the new interest rate are based;

(3) The extent to which the bank has forgone any increase in the mortgage interest rate;

(4) The monthly payment due after implementation of the interest rate adjustment and/or other contractual effects of the rate change;

(5) The amount of the monthly payment, if different from that given in response to item 4, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term;

(6) The amount of the prepayment penalty, if any, that will be charged if the borrower chooses to prepay the loan rather than accept an interest rate increase.

(c) If under the bank's adjustable-rate mortgage program, a payment change may occur at a different date than an interest rate change, at least 30 days and no more than 45 days before any such payment change may take effect, the bank must notify the borrower in writing of the following items:

(1) An explanation of the circumstances that have led to such a payment change;

(2) The monthly payment due after implementation of the payment adjustment;

(3) The amount of the monthly payment, if different from

that given in response to item 2, that would be required to fully amortize the loan at the new interest rate over the remainder of the loan term;

(4) The amount of any prepayment penalty that will be charged if the borrower chooses to prepay the loan.

(d) A bank making any loan to finance or refinance the purchase of and secured by a lien on a one to four-family dwelling which is either payable on demand or at the end of a term which, including any terms for which the bank has promised to refinance the loan, is shorter than the term of the amortization schedule, must include the following notice displayed prominently and in capital letters in or affixed to the loan application form and in or affixed to the loan note:

THIS LOAN IS PAYABLE IN FULL (AT THE END OF \_\_\_ YEARS **or** ON DEMAND).(AT MATURITY **or** IF THE BANK DEMANDS PAYMENT) YOU MUST REPAY THE ENTIRE PRINCIPAL BALANCE OF THE LOAN AND UNPAID INTEREST THEN DUE. THE BANK IS UNDER NO OBLIGATION TO REFINANCE THE LOAN AT THAT TIME. YOU WILL THEREFORE BE REQUIRED TO MAKE PAYMENT OUT OF OTHER ASSETS YOU MAY OWN, OR YOU WILL HAVE TO FIND A LENDER WILLING TO LEND YOU THE MONEY AT PREVAILING MARKET RATES, WHICH MAY BE CONSIDERABLY HIGHER THAN THE INTEREST RATE ON THIS LOAN. IF YOU REFINANCE THIS LOAN AT MATURITY, YOU MAY HAVE TO PAY SOME OR ALL CLOSING COSTS NORMALLY ASSOCIATED WITH A NEW LOAN, EVEN IF YOU OBTAIN REFINANCING FROM THE SAME BANK.

Fixed-rate short-term or demand loans for which this notice has been properly given will not be characterized as adjustable-rate mortgage loans.

(e) At the date on which the initial interest rate on an adjustable-rate mortgage loan is determined, the bank must inform the borrower of the initial index value against which interest rate changes will be measured. This initial index value must be included in the note which the borrower signs. The borrower must be given a copy of that note no later than at loan closing.

Hunter O. Wagner, Jr.  
Commissioner

## **RULE**

### **Department of Commerce Office of Financial Institutions**

#### **Adjustable-Rate Mortgage Instruments**

Under the authority granted by R.S. 6:237-B, the Commissioner of Financial Institutions issues the following additions to the Rule previously published in Volume 7, Number 6 of the *Louisiana Register*, dated June 20, 1981. The purpose of this addition to the Rule is to provide a means by which state-chartered banks may have authority consistent with that granted national banks by the Comptroller of the Currency Rules and Regulations 12 CFR, Part 29, which was originally published on Page 18932, Volume 46, Number 59 of the *Federal Register*, dated March 27, 1981, and amended with this addition on Page 13775, Volume 47, Number 63 of the *Federal Register*, dated April 1, 1982.

#### **SUMMARY**

This document makes two technical amendments to the regulation establishing a framework within which state-chartered

banks may make or purchase adjustable-rate mortgage loans.

#### **ADDITION TO RULE**

The Commissioner of Financial Institutions hereby amends the Adjustable-rate Mortgage Rule to permit state-chartered banks to use two additional indexes to adjust interest rates on adjustable-rate mortgage loans. The following indexes are added:

1. The weekly or monthly average yield on United States Treasury securities adjusted to a constant maturity of three years. The weekly average yields are published in the "Federal Reserve Bulletin" and made available weekly by the Federal Reserve Board in Statistical Release H.15 (519). The monthly average yields are published in the "Federal Reserve Bulletin" and made available by the Federal Reserve Board in Statistical Release G.13 (415) during the first week of each month.

2. The weekly average or the monthly average of weekly average auction rates on United States Treasury bills with a maturity of six months. The weekly average rates are published in the "Federal Reserve Bulletin" and made available weekly by the Federal Reserve Board in Statistical Release H.15 (519). The monthly average yields are published in the "Federal Reserve Bulletin" and made available by the Federal Reserve Board in Statistical Release G.13 (415) during the first week of each month.

Hunter O. Wagner, Jr.  
Commissioner

## **RULE**

### **Department of Commerce Office of Financial Institutions**

The Commissioner of Financial Institutions, in exercise of his powers specifically enumerated in R.S. 902B and R.S. 950.1D, hereby amends the Rule published in Volume 6, Number 12, *Louisiana Register* dated December 20, 1980, pertaining to the conversion of state chartered savings and loan associations from mutual to stock form of charter.

#### **AMENDMENT TO RULE**

So much of Section V of the Rule governing the conversion of state chartered savings and loan associations from mutual to stock form as reads:

V. Content of Applicant's Plan of Conversion. The Applicant's plan of conversion shall comply with the requirements of the FSLIC, including the determination of the eligibility record date and supplemental record date (if applicable) with respect to subscription rights to purchase the Applicant's conversion stock, except, however, *that officers, directors and employees of the Applicant in their individual capacities as officers, directors and employees, will be permitted to purchase in the specific subscription offering category established for that purpose an amount no greater than twenty percent of the total shares being offered in the plan of conversion.*

is amended to read:

V. Content of Applicant's Plan of Conversion. The Applicant's plan of conversion shall comply with the requirements of the FSLIC, including the determination of the eligibility record date and supplemental record date (if applicable) with respect to subscription rights to purchase the Applicant's conversion stock, *and provides that the total number of shares which officers and directors of the converting insured institution and their associates may purchase in the conversion shall not exceed thirty-five percent of the total offering of shares in the case of a converting insured institution with total assets of less than \$50 million, or twenty-five*

percent of the total offering of shares in the case of a converting insured institution with total assets of \$500 million or more; in the case of converting insured institutions with total assets in excess of \$50 million but less than \$500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 30 percent in the case of a converting insured institution with total assets of \$275 million.)

The change in FSLIC Regulations was published in Volume 47, Number 89, *Federal Register*, dated May 7, 1982.

Hunter O. Wagner, Jr.  
Commissioner

## RULE

### Department of Commerce Office of Financial Institutions

Under authority granted by R.S. 6:902B, the Commissioner of Financial Institutions intends to adopt the following amendment to Rule of Volume 6, Number 9 of *Louisiana Register* dated September 20, 1980 for purpose of providing a means by which state chartered associations may have authority consistent with that proposed for federal associations by the Federal Home Loan Bank Board in Section 9855 of the *Federal Register* Volume 47, No. 45, March 8, 1982.

#### AMENDMENT

to the  
Office of Financial Institutions  
Rule of Volume 6, Number 9  
of

*Louisiana Register* dated September 20, 1980

Delete Section III. as it appears and substitute the following:

#### III. Pre-Authorized Subsidiary Investments

Pre-authorized activities of a subsidiary corporation, performed directly or through one or more wholly owned subsidiaries or joint ventures shall consist of one or more of the following:

A. Loan origination, purchasing, selling and servicing.

B. Acquisition of unimproved real estate lots and other unimproved real estate for the purpose of prompt development and subdividing.

C. Development and subdivision of and construction of improvements, including improvements to be used for commercial or community purposes when incidental to a housing project, for sale or for rental on, real estate referred to in subdivision B of this subparagraph.

D. Acquisition of improved residential real estate and mobile home lots to be held for sale or rental.

E. Acquisition of improved residential real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental.

F. Engage in real estate brokerage services if real estate laws, Rules and Regulations are complied with.

G. Serving as an insurance broker, agent, or underwriter if insurance law, Rules and Regulations are complied with.

H. Serving as a title insurance company if insurance laws, Rules and Regulations are complied with.

I. Preparation of state and federal tax returns.

J. Acquisition of real estate to be used for association offices and related facilities.

K. Partial or complete ownership of computer center that provides services for the parent association and others.

L. Make consumer loans as outlined in LRS 9:3510, et seq.

M. Perform debt collection services.

N. Issue letters of credit as part of their commercial lending.

O. Operate coin and currency services by contracting with Federal Reserve banks or commercial banks to make coin and currency available. This includes delivery and security arrangements.

P. Engage in the leasing of consumer and business goods.

Q. A subsidiary may act as agent for the parent association except that it shall not receive payments on new or established savings accounts, nor shall it perform any duties for the association other than those specifically authorized herein.

R. Other activities which may be approved by the Commissioner.

Delete Section V. as it appears and substitute the following:

#### V. Investment and Debt Limitation

A. Investments in subsidiary corporations shall include investment in its capital stock, obligations, both secured and unsecured, or other securities of the service corporation, and shall not, in the aggregate, exceed ten percent of the association's total assets. The limitation does not apply to subsidiaries organized solely as a holding corporation for business property as outlined in R.S. 6:822F.

B. The subsidiary corporation engaged solely in the activities specified in Paragraph III.A. above; may incur debt in a ratio of 10:1 of the subsidiary's consolidated net worth.

C. Subsidiary corporations engaged in activities other than that authorized in Paragraph III.A. above shall not incur debt in the aggregate in excess of the parent association's net worth less the aggregate investment in all subsidiary capital stock, obligations, both secured and unsecured, and other securities of the subsidiary corporation.

Hunter O. Wagner, Jr.  
Commissioner

## RULE

### Department of Commerce Racing Commission

LAC 11-6:25.35

No owner or trainer shall enter, or cause to be entered, a horse to race at a track of an association in which he has a direct or indirect financial interest.

Ray Vanderhider  
Chairman

## RULE

### Department of Commerce Racing Commission

LAC 11-6:57

#### RULE 57: EXCLUSION AND EJECTION

57.1 No person who is known or reputed to be a bookmaker or a vagrant within the meaning of the statutes of the State of Louisiana or a fugitive from justice, or whose conduct at a

racetrack in Louisiana or elsewhere, is or has been improper, obnoxious, unbecoming or detrimental to the best interest of racing, shall enter or remain upon the premises of any licensed association conducting a race meeting under the jurisdiction of the Commission; and all such persons shall upon discovery or recognition be forthwith ejected.

57.2 If a majority of the stewards shall find that any person has violated any of the Rules of racing, or has been involved in any action detrimental to the best interests of racing generally, they may exclude such person from the grounds, or any portion of such grounds, of the association conducting the meeting for a period not exceeding the duration of the race meet plus ten days; or they may suspend the license of such person from participating in racing in this state, for a period not exceeding the duration of the meet plus ten days, or both such exclusion and suspension; and if the stewards consider necessary any further action, they shall promptly refer the matter to the Commission.

57.3 The following categories of persons may be excluded or ejected:

a) Persons who because of age, in accordance with other sections of these Rules, are not allowed to be licensed or attend the races. (See Rules 2.8; 14.3; 20.3; 23.2; 30.1).

b) Anyone convicted of a felony under the laws of the United States, this state or any other state or country, or any crime or offense involving moral turpitude, within the preceding five years, if the presence of said person would be against the public interest and the best interest of horseracing.

c) Persons of notorious or unsavory reputation, whose presence would be contrary to the public interest and the best interest of horseracing.

d) Any person whose presence on the grounds of a racetrack would be inimical to the State of Louisiana and its citizens, or to the track, meeting, race, or association, to such an extent that his presence would be contrary to the public interest and the best interest of horseracing.

e) Persons who have had a license or permit refused, suspended or withdrawn, and whose presence would be contrary to the public interest and the best interest of horseracing.

f) Any person who is knowingly consorting or associating with bookmakers or persons of similar pursuits, or has himself engaged in similar pursuits, or has been found guilty of any fraud or misrepresentation in connection with racing or breeding, or otherwise has violated any law, Rule or Regulation with respect to racing in this or any other jurisdiction, or any Rule, regulation, or order of the Commission, or has been found guilty of or engaged in similarly related like practices.

57.4 It shall be the duty of the owner or officer of each association to notify the Secretary of the Commission of all ejections and exclusions, in writing, within three calendar days after the day on which the exclusion or ejection occurred, exclusive of Saturdays, Sundays or legal holidays. The notice shall include the name of the person excluded or ejected, the date, approximate time, place where the exclusion or ejection occurred, the reason therefor, and other pertinent information.

57.5 The person excluded or ejected may demand a public administrative hearing before the Racing Commission, by giving the Commission written notice of the exclusion or ejection within ten calendar days after its occurrence, exclusive of Saturdays, Sundays, or legal holidays.

57.6 Upon receipt of the notice of the aggrieved person, the Commission shall call and hold a hearing at the next regular meeting of the Commission which is held not sooner than fifteen days after receipt of such notice.

57.7 If the aggrieved person requests an expedited hearing, the hearing shall be set not less than ten days or more than twenty days after the receipt of the request for the expedited

hearing, and if the Commission does not hold the hearing within said time period, the aggrieved person may proceed with his other legal remedies. If the Commission and the person demanding a hearing mutually agree, the hearing may be held at any time.

57.8 The Commission, upon evidence received at the hearing and the merits of the testimony, shall determine whether the person was lawfully excluded or ejected in accordance with its Rules and Regulations, and it is the responsibility of the owner or officer of the association to show that the person was excluded or ejected in accordance with the Rules and Regulations.

57.9 If the Commission determines that the exclusion or ejection was lawful, it shall order the person excluded or ejected for a specific time from all racetracks, race meetings, races, or licensed establishments that are under the commission's regulatory powers.

57.10 If the Commission determines that the exclusion or ejection was unlawful, it shall order the owner or officer of the association to allow such person to enter the premises and participate in any race that he is otherwise qualified for.

57.11 Any owner, official, supervisor, or employee of an association shall keep from the premises where they conduct their business or perform their employment any person whom he knows is ordered by the Commission to be excluded or ejected. The Commission may revoke, limit, condition, or suspend the license of or impose a fine on, any individual or licensee in accordance with the laws of the state and Rules and Regulations of the Commission, if the licensee or person knowingly and willfully fails to act to exclude or eject any person who should be excluded or ejected according to the Rules of racing, or any person whom he knows is ordered by the Commission to be excluded or ejected.

57.12 Any person who is excluded or ejected from any racetrack, race meeting, or race, shall exhaust all administrative remedies before the Commission prior to instituting any legal action seeking judicial relief.

Ray Vanderhider  
Chairman

## **RULES**

### **Board of Elementary and Secondary Education**

Rule 3.01.51.n

The Board adopted an amendment to Bulletin 741, page 14 to allow a foreign language or a course taught in a foreign language as a substitute for the fourth English requirement.

Rule 3.01.70.u(4)(a)

The Board adopted an amendment to Bulletin 746 to allow speech therapists who are certified to teach in Louisiana the certification endorsement of English as a Second Language upon completion of the four required courses as described in the Bulletin.

James V. Soileau  
Executive Director

## **RULE**

### **Department of Education Louisiana Educational Employees Professional Improvement Program**

The State Committee for the Louisiana Educational Employees Professional Improvement Program R.S. 17:3601-R.S.

17:3661 at its August 31, 1982 meeting exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953B, and adopted the following as a Rule:

**BULLETIN 1619, REVISED 1982**

This publication in its entirety may be examined during regular business hours at the *Louisiana Register*, 1500 Riverside N., Baton Rouge, La.

This adoption is necessary because the Committee must distribute these guidelines in order to allow participating educators to continue in the Professional Improvement Program for 1982-83 as provided by the Louisiana Legislature.

Robert C. Rice, Chairman  
State Committee for the Louisiana  
Educational Employees Professional  
Improvement Program

**RULE**

**Office of the Governor  
Department of Facility Planning and Control**

LOUISIANA  
CAPITAL IMPROVEMENT PROJECTS  
PROCEDURE MANUAL  
FOR DESIGN AND CONSTRUCTION

ARTICLE 1  
CONDITION OF THE CONTRACT

1.1 The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 1982 Edition, herein referred to as the "Procedure Manual" and any amendments thereto, as published by Facility Planning and Control Department, shall be a part and condition of the Contract Between Owner and Designer, herein referred to as the "Contract".

ARTICLE 2  
DEFINITIONS

2.1 *The Owner* is the State of Louisiana, Office of the Governor, Division of Administration, the responsibilities of which shall be exercised by the Commissioner of Administration or his designated representative, Facility Planning and Control Department.

2.2 *The User Agency* is the agency, department, division, board or institution which will be the principal user of and for which the facility is being designed and constructed, as named in the Contract. Where reference is made hereinafter to the *User Agency*, it will refer to both the "Umbrella" and "Local" entities of the department, board, agency, division, etc. (Examples: The LSU Board of Supervisors and the Department of Health and Human Resources are "Umbrella" Using Agencies and "Local" Using Agencies such as LSU-Alexandria and Pinecrest State School are under their respective jurisdiction and administration).

2.3 *The Designer* is a person or organization professionally qualified and licensed to practice Architecture, Engineering or Landscape Architecture in accordance with the laws of the State of Louisiana, who is to perform Basic Services for the Project, as named in the Contract.

2.4 *Consultants* are individuals or organizations engaged by the Owner or the Designer to provide professional consultant services complementing or supplementing the Designer's Services. As applicable, Consultants shall be licensed to practice in accordance with laws of the State of Louisiana. The Owner shall engage or have the Designer furnish as part of the Designer's Services the services of Consultants which are deemed necessary for the project. Normal Consultants are architects, landscape

architects, civil, structural, mechanical and electrical engineers, etc., compensation for which is included in Designer's basic fixed fee. Special Consultants are those, other than the above, which the Owner may approve as required for the Project to perform special services and for which compensation will be in accordance with Article 5.3.1

2.5 *The Project* is a Capital Outlay Project for which funds have been appropriated or other public government project for which funds are available, as specifically defined in the Program attached to and stated in the Contract between Owner and Designer.

2.6 *The Total Construction Budget (TCB)* is the sum of the funds Available for Construction (AFC) plus the Designer's Fee. The AFC is the actual amount of funds available for awarding the construction contract(s).

ARTICLE 3

OWNER-USER AGENCY RESPONSIBILITIES

3.1 The Owner's designated representative shall be the Facility Planning and Control Department. The User Agency shall designate a representative authorized to act in its behalf with respect to the Project.

3.2 After selection of the Designer and prior to signing of the Contract, the Owner shall furnish to the Designer the Preliminary Program, as described below, and a statement of the funds Available For Construction (AFC).

3.3 After the Contract is signed by the Owner, the Owner shall schedule and hold a Pre-Design Conference at the Office of Facility Planning and Control or at a location designated by the Owner. This conference shall be attended by the Designer and representatives of the Owner and User Agency.

3.3.1 The purpose of this conference shall be to initiate a general review and discussion of the Project, including but not limited to, adopting or confirming the following:

1) The Preliminary Program defining (a) the type, number and sizes of spaces required, (b) adjacency considerations, (c) the type and number of people using the facility and (d) the activities to be held in the facility;

2) The site location of the facility;

3) The Total Construction Budget (TCB) stating the amount Available for Construction (AFC) and the Designer's Fee;

4) The Time Schedule outlining completion dates of designated phases as described in Article 7 hereinafter and the anticipated period of construction. The Time Schedule for planning phases shall commence with the date of the Pre-Design Conference and shall continue until completion of all construction documents and their delivery to the Owner and shall take into account review periods agreed to between Designer and Owner.

5) At the Pre-Design Conference, the Owner will give the Designer a package containing "Instructions to Designers" and Bidding and Construction Contract Forms as described hereinafter in 7.1.4(C).

3.3.2 The Owner shall have prepared, at the Owner's cost, by a registered land surveyor, a topographical survey of the site including structures, roads, walks and utilities, when necessary. The Owner will contract for and pay for geotechnical services as described in Article 7.1.1-4 hereinafter.

3.4 The Owner and the User Agency shall examine all documents submitted by the Designer and shall render decisions pertaining thereto, to avoid unreasonable delay in the progress of the Designer's Services.

3.5 The Owner will select a testing laboratory to perform all required tests during construction, and will contract for and pay for all such testing services.

3.6 The Owner shall provide record construction documents of existing buildings for renovation or addition projects, when those are available.

ARTICLE 4  
TOTAL CONSTRUCTION BUDGET

4.1 The Total Construction Budget is the amount of funds Available For Construction (AFC) and the Designer's Fee for the Project as fixed by the Owner and stated in the Contract Between Owner and Designer.

4.2 The Total Construction Budget, unless otherwise provided in the Contract, shall not include land cost, movable equipment, furnishings, advertising, recordation, builders risk insurance, surveys, soil borings, testing and full-time project representation during construction.

4.3 The Designer shall be responsible for designing the project so that the sum of the base bid and all authorized additive alternates does not exceed the funds Available For Construction. The use of any additive alternate bids must be approved by the Owner.

4.4 At the completion of the Program Completion Phase, as stated hereinafter in Article 7, the Designer shall determine whether the funds Available For Construction are realistic for the project when compared with the Completed Program. At this point, or at any other submissions of Probable Construction Cost by the Designer, if such Probable Construction Cost is in excess of funds available, the Owner shall have the option to:

1) Instruct the user agency to collaborate with the designer to revise the program to be within the funds available for construction; such program revision to be done without additional compensation to the Designer, except as provided in Article 7.3.4, hereinafter.

2) Provide additional funds to increase the Total Construction Budget;

3) Approve or disapprove the Designer's use of additive alternates so that the sum of the base bid and the alternates will be within the funds Available For Construction; or

4) Abandon or suspend the project.

4.5 When the lowest bona fide Base Bid exceeds the amount Available for Construction, the Owner shall have the option to (1) have the Designer, without additional compensation, modify the Construction Documents as required in order to rebid the project to be within the amount Available for Construction, (2) provide additional funds to award the Construction Contract, without additional compensation to the Designer, or (3) abandon the project. Should the Owner elect to award the Contract on the Base Bid and one or more alternates in an amount in excess of the AFC, the Designer shall not receive additional compensation because of the overrun.

ARTICLE 5  
COMPENSATION

Compensation to be paid the Designer for services and reimbursable expenses shall be as follows:

5.1 Fixed fee for Basic Services, as described in Article 7 hereinafter, shall be calculated as the project of the fee percentage and the funds Available for Construction (AFC). The fee percentage shall be computed by the formula:

$$\text{FEE PERCENTAGE} = \frac{42.75}{\log \text{ AFC}}$$

For projects with an AFC over \$20,000,000, the fee shall be negotiated.

5.1.1 Compensation to be paid the Designer on the Fixed Fee basis shall remain constant for the duration of the project without regard to the actual construction cost, except if the Owner changes the Total Construction Budget prior to the receipt of bids, the Designer's contract will be amended to reflect the new Total Construction Budget and resultant Fixed Fee.

5.1.2 Compensation to be paid the Designer on the Fixed Fee basis shall be appropriately modified for certain projects as follows:

(1) *Renovation Factor* of up to 1.25 shall be multiplied by the fee percentage to arrive at the Fixed Fee for renovation projects as determined by the Owner. This Fixed Fee shall include making measured drawings of the Project when necessary.

(2) *Duplicated Work Factor* shall be subject to negotiation between the Owner and Designer on an individual project basis,

(3) *Prefabricated Buildings*: The fee shall be negotiated, but shall not exceed that stated in 5.1 above,

(4) *Multiple Contracts*: If the Owner determines that the best interest of the Project is served by constructing the Project under two or more separate contracts, the fee shall be established for each portion by application of the formula in 5.1 above.

5.2 Payment to the Designer for Additional Services, as defined in Article 7.3, shall be made on the basis of Designer's Direct Personnel Expense for performing such services multiplied by a factor of 3.0.

5.2.1 Direct Personnel Expense is defined as the normal, straight-time direct salaries of all the Designer's personnel, except principals, engaged in the Project (technical but not clerical).

5.2.1.1 On signing the Contract the Designer shall submit for the Owner's approval, a schedule of principals with an hourly rate for each and such hourly rate shall reflect the total compensation for principals' time when required for additional services, without application of the multiple.

5.2.2 Routine change orders which involve a small amount of effort will not involve extra compensation. Before the Designer prepares a change order for which he feels he is entitled to extra compensation due to the extra effort involved, he shall so notify the Owner and secure Owner's approval to proceed with the change order. When final payment is made to the Designer, all such change orders will be reviewed by the Owner and the Designer's contract will be amended to reflect extra compensation for the change orders which the Owner has determined merit additional fee.

5.2.3 Designer shall prepare change orders caused by errors or omissions of the Designer without additional compensation and Designer may be required to pay for the Construction Cost of such change orders if the change results in damage to the Owner.

5.2.4 Preparation of documents required for change orders for any cause shall not be started without Owner's prior written approval.

5.3 *Reimbursable Expenses* are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Designer, his employees or his professional consultants in the interest of the project as directed and authorized by the Owner in writing prior to their incurrence.

5.3.1 Reimbursable expenses may include, but not be limited to the following:

(1) Expense of transportation and living when traveling in connection with the Project outside the State of Louisiana, and in accordance with State rates and regulations.

(2) Fees paid for securing approval of authorities having jurisdiction over the project.

(3) Expense of renderings or models for the Owner's use.

(4) Fees of Special Consultants authorized by the Owner.

ARTICLE 6  
PAYMENTS TO THE DESIGNER

6.1 Payments on account of Designer's Services shall be made as follows:

6.1.1 Basic Services

1) Upon satisfactory completion of all Basic Services for

each phase as described in Article 7, submission of all documents to the Owner and upon the Owner's approval of same, which approval shall not be arbitrarily withheld, payment for the following phases of the Designer's services will be made in one lump sum (with the exception of the Construction Documents Phase as described below in 6.1.2); such payments shall be up to the following percentages of the Designer's fixed fee, which percentages are cumulative:

Program Completion Phase	5%
Schematic Design Phase	15%
Design Development Phase	30%
Construction Documents Phase	70%
Bidding and Contract Phase	75%

2) Monthly in proportion to the Contractor's Certificate for Payment for the following phase:

Construction Phase	95%
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3) Upon satisfactory completion and furnishing required documents to the Owner for the following phase:

Construction Close-Out Phase	100%
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6.1.2 A partial payment for the Construction Documents Phase shall be made when the Designer has completed 100 percent of the Construction Documents and has submitted these to the Owner, the User Agency, and the other required statutory agencies and the Owner determines by inventory check and conformity with Article 7 that all required documents have been submitted, then the Designer shall be entitled to a payment of 50 percent of the fee for the Construction Documents Phase. Should the Owner's approval of the Construction Documents not be issued within 45 days of submittal due to no fault of the Designer, then the Designer shall be paid an additional payment of 40 percent of the fee for Construction Documents. The balance of the fee for this phase will be due when all requirements above have been met.

6.2 Payments on account of Designer's Additional Services and for Reimbursable Expenses shall be made on submission of Designer's invoices with supporting data, and their written approval by Owner and User Agency and issuance of an amendment to the Contract covering such services.

6.3 Payments to the Designer on Termination, Abandonment or Suspension shall be made in accordance with Articles 9 and 10, hereinafter.

## ARTICLE 7 DESIGNER'S SERVICES

### 7.1 Basic Services

The Designer's Basic Services consist of the phases described below and include the normal Services of the Designer and normal complementing or supplementary Services of his Consultants, and any other services included in the Contract. Review Documents of each phase shall be submitted to the Owner and to the User Agency for their approval. In addition, for the Construction Documents Phase, Review Documents shall be submitted to other regulatory agencies designated by the Owner for their approvals. Designer shall not proceed to subsequent phases until the requisite written approvals are received and until authorized by the Owner in writing to so proceed. All statements of probable Construction Cost shall be escalated to the anticipated bid date of the project.

#### 7.1.1 Program Completion Phase

1) After the initial pre-design conference the Designer shall meet and work with the User Agency to determine more detailed program requirements for the project and shall refine and complete the program in a form acceptable to the Owner.

2) The Designer shall determine whether the funds Available for Construction are realistic for the project when compared with the completed program, as described in Article 4.4.

3) The Completed Program shall be submitted to the

Owner and the User Agency for their written approval and thereafter only the Owner shall have authority to alter the Program. Any authorization by the Owner to alter the Completed Program shall be in writing.

4) The Designer shall obtain one or more proposals from qualified geotechnical engineers required for the Project and recommend to the Owner for his approval. The Owner will contract directly for such services.

5) The Designer shall finalize the Time Schedule as described in Article 3.3.1-4, for the Owner's approval.

#### 7.1.2 Schematic Design Phase

1) Based on the mutually agreed Completed Program, funds Available For Constuction, Site Location and Time Schedule, the Designer shall prepare Schematic Design Documents in such format and detail as required by the Owner, consisting of drawings, outline specifications and other documents illustrating the scale and relationship of the Project components for the written approval of the Owner and the User Agency.

2) The Designer shall submit to the Owner and User Agency a Statement of Probable Construction Cost based on current area, volume or other unit costs method.

3) A preliminary Energy Conservation Analysis for the Project shall be prepared by the Designer and submitted to the Owner for review and approval. The requirements of this analysis will be detailed in the "Instructions to Designers", to be given to the Designer at the Pre-Design Conference.

4) An analysis of requirements of the Louisiana Code for State Owned Buildings as they relate to this project shall be prepared by the Designer and submitted for review and approval.

#### 7.1.3 Design Development Phase

1) Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the Program or the funds Available for Construction, the Designer shall prepare, for approval by the Owner, Design Development Documents consisting of drawings, expanded outline specifications based on the 16 Divisions of the Uniform Construction Index, and other documents to fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be required.

2) The Designer shall submit to the Owner and User Agency a Statement of Probable Construction Cost based on the 16 Divisions of the Uniform Construction Index. This shall have back-up material and data in such format and detail as required by Owner to support each of the 16 Divisions.

3) The Designer shall prepare the Energy Conservation Analysis for the Project, for submittal to the Owner for review and approval.

4) The Designer shall submit a more detailed analysis of the codes required by the Louisiana Code for State Owned Buildings, consisting of, but not necessarily limited to, statements of (1) Classification of occupancy, (2) Classification of construction, (3) Code allowable area for occupancy and construction type, and calculations of (a) actual building area and (b) code allowable area increase for exceptions.

#### 7.1.4 Construction Documents Phase

1) Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the funds Available For Construction, authorized by the Owner, the Designer shall prepare for written approval by the Owner, the User Agency, and other State regulatory agencies as required by law, the following documents bearing the Designer's seal and those of his consultants, all sufficiently complete and clear to define the quantity and quality of the work to bid and build the Project:

(a) Working Drawings - dimensioned plans, elevations, sections, details and schedules of all architectural, landscaping,

civil, structural, mechanical and electrical work in the Project in general conformity with Chapter 12, latest Edition, of the A.I.A. Handbook of Professional Practice or as the Owner may require.

(b) Technical Specifications - performance or proprietary specifications on the materials, processes or systems to be incorporated in the work, using the 16 Divisions format of the Uniform Construction Index. State law prohibits the Designer from closing specifications on any item in the specification except as provided for in R.S. 38:2290-2296 and in R.S. 38:2290 (A) as amended by Act 596 of 1982. Any reason for closing specifications as provided for by law shall be brought to the attention of the Owner in writing for review. Additional requirements for specifications are contained in the "Instructions to Designers" documents which will be furnished to the Designer at the Pre-Design Conference.

(c) Bidding and Construction Contract Forms - the Owner will furnish to the Designer policy requirements that the Designer must include in his Documents on the following: Advertisement for Bids, Instructions to Bidders, Bid Form, General Conditions, Supplementary General Conditions, Contract Between Owner and Contractor, Performance and Payment Bond, and Non-Collusion Affidavit. If the probable construction cost of the Project is \$25,000.00 or more, the Designer shall obtain a Prevailing Wage Determination from the Secretary of Labor for inclusion in the Documents.

2) The Designer shall submit to the Owner and User Agency an updated Statement of Probable Construction Cost based on the 16 Divisions of the Uniform Construction Index, with back-up material as described in 7.1.3 above.

3) The Designer shall update and verify the Energy Conservation Analysis prepared in the Design Development Phase.

4) The Designer shall submit one bound copy of all design calculations on the Project for the Owner's files.

#### 7.1.5 Bidding and Contract Phase

1) Upon receipt of written approval from the User Agency and other State regulatory agencies, receipt of corrected and completed Construction Documents, and approval of the latest Statement of Probable Construction Cost, the Owner may advertise the Project for bids and shall be assisted by the Designer in obtaining bids.

2) The Designer shall be responsible for the furnishing and distribution of copies of Construction Documents to (1) all Contractors licensed in accordance with State law who desire to bid the Project, subject to deposit requirements as provided for in the Advertisement for Bids, (2) to recognized construction trade organizations as directed by the Owner at no cost, (3) to the User Agency, and other State agencies and regulatory authorities as required or directed by the Owner, at no cost.

3) The Designer shall be responsible for evaluating prior approval requests for substitution of materials, products and equipment required by the applicable statutes and Owner Procedures.

4) The Designer shall prepare and issue all addenda, in accordance with the Contract Documents, as required to modify or clarify the Construction Documents.

5) The Designer shall arrange and conduct a pre-bid conference in accordance with the Contract Documents.

6) Unless waived by the Owner, the Designer shall be present for the opening of bids by the Owner and shall provide a form for assisting the Owner in tabulating the bids.

7) After receipt of bids, the Designer shall analyze the bids, consult with the Owner and User Agency and make written recommendation to the Owner to (1) award the Construction Contract to the lowest responsible bidder if within the funds Available For Construction, in order that the Owner may prepare and award the Construction Contract, or (2) modify the construction documents as described in Article 4.5, or (3) to reject all bids.

8) After award of the construction Contract, the Designer shall complete and submit to the Owner a Cost Data Form, in a format provided by the Owner.

#### 7.1.6 Construction Phase

1) The Designer shall provide administration of the Construction Contract as set forth herein and in the Construction Documents.

2) The Designer shall make written recommendations for the Owner's approval, for the type and number of tests required for the Project, as soon as the Construction Contract has been awarded. The Owner will select, contract for and pay for such testing services.

3) The Designer, as the representative of the Owner during the Construction Phase, shall advise and consult with the Owner and all of the Owner's instructions to the Contractor shall be issued through the Designer. The Designer shall have authority to act on behalf of the Owner to the extent provided herein or as provided for in the Contract Documents unless otherwise modified in writing.

4) After the execution of the Construction Contract the Owner will issue a Notice to Proceed to the Contractor and will notify the Designer to arrange for and conduct a pre-construction conference. The Designer shall furnish to the Contractor, free-of-charge, up to 25 sets of the Construction Documents.

5) The Designer shall visit the project as often as necessary to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents. Such visits shall not be less than once per week when the work is in progress. On the basis of the Designer's on-site observations, he shall endeavor to guard the Owner against defects and deficiencies in the Work of the contractors. A written report of each visit by the Designer to the Project shall be mailed to the Owner and User Agency within five (5) calendar days after each visit.

6) The Designer agrees that his representatives on the construction project shall be qualified by training and experience to make decisions and interpretations of the Construction Documents and such interpretations shall be binding upon the Designer as if made by him. All such decisions shall be confirmed in writing immediately with copies to the Owner, conditioned that such decisions and interpretations shall not modify adversely the requirements of the contract documents. If in the opinion of the Owner such representatives are either negligent or unqualified to perform their duties, the Designer's representative shall be replaced promptly, without protest.

7) Based on observations at the site and on the Contractor's Applications for Payment, the Designer shall determine the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. No Certificate of Payment shall be issued until a schedule of values has been received from the Contractor. The issuance of a Certificate for Payment shall constitute a representation by the Designer to the Owner, that the Work has progressed to the point indicated and that to the best of the Designer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents and that the Contractor is entitled to payment in the amount certified. By issuing a Certificate for Payment, the Designer shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum. The Designer shall process certificates as promptly as possible and in any case, within seven (7) calendar days. If a certificate is held up for any reason, written notice stating the reasons for the delay must be given to the Contractor and Owner.

8) The Designer shall establish and conduct a regular schedule of monthly meetings, to be held on the job site each month

throughout the construction period, and shall require attendance at the meetings by representatives of his Consultants, the Contractor and his principal sub-contractors. The Owner and User Agency shall be notified of such meetings and may be represented. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way to the end of maintaining progress of the project on schedule and completing the project within the contract time.

9) The Designer shall prepare and submit to the Owner and User Agency a monthly Status Report on the Project. The form of the Report shall be supplied to the Designer at the Pre-construction Conference. The Designer's Status Report shall be submitted to the Owner monthly along with the Contractor's Certificate for Payment and Designer's Statement for Professional Services.

10) The Designer shall be the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by both the Owner and Contractor. The Designer shall make decisions on all claims of the Owner or Contractor relating to the execution and progress of the Work and on all other matters or questions related thereto.

11) The Designer shall have authority to reject Work which does not conform to the Contract Documents. If the Designer considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he shall request the Owner to authorize special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed.

12) The Designer shall promptly review and approve shop drawings, samples and other submissions of the Contractor only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.

13) Only with the authorization of the Owner, shall the Designer prepare Change Orders. The Designer shall obtain from the Contractor his estimate of cost and time changes in accordance with the Contract Documents for the Change Order, review and approve same, and submit it to the Owner for approval before any changes are made in the Contract. No additional compensation shall be due the Designer for preparation of Change Orders without the written prior approval for such compensation by the Owner, as described in Article 5.

14) R.S. 38:2241.1 entitled "Acceptance of Governing Authority", defines the procedures to be followed in accepting a project and gives the Owner the discretion to make acceptance on either full completion or substantial completion. Upon completion of the work, or on substantial completion as requested by the Owner, the Designer shall conduct an inspection of the project with the Owner, the User Agency and the Contractor to determine if the Contractor's work is in accordance with Contract Documents. The Designer shall prepare a list of items ("punch-list") for correction or completion together with an assigned dollar value for each item.

If the Owner desires to accept on either full or substantial completion, the Designer shall recommend such acceptance in writing and shall issue a certificate for payment of funds due the Contractor, excepting retained percentage, liquidated damages and the value of the "punch-list" items. Upon the Contractor's furnishing of a clear lien certificate, the Designer shall make a final inspection and issue a final certificate for the retainage. A certificate of payment for "punch-list" items shall be issued upon their completion.

Upon recommendation of acceptance, the Designer shall receive, review and forward to the User Agency guarantees, operation, and maintenance manuals, keys and other closing documents as required by the Contract Documents. Designer shall obtain a written receipt for these and forward same to the Owner.

#### 7.1.7 Construction Close-Out Phase

1) After acceptance of the Project by the Owner, the Designer shall prepare and furnish to the Owner (1) a Final Report in the format and containing information as required by the Owner, and (2) two sets of Record Drawings (As Built) on reproducible film sepias for the Owner and User Agency files. The Record Drawings shall be reviewed with and approved by the Contractor prior to submission.

2) Compliance with all of the above will constitute completion of the Designer's Basic Services for compensation purposes, however, the Designer shall be required to follow up on items to be corrected during the warranty period and shall arrange for and conduct an inspection of the Project prior to expiration of the one year warranty period and shall be required to inform the Owner, User Agency and Contractor of any items to be corrected and shall inspect the Project as required until the work is completed, without additional compensation.

#### 7.2 Project Representation Beyond Basic Services

7.2.1 If the Owner and Designer agree that more extensive representation at the site is required than is described in Article 7.1.6, then the Designer shall provide one or more Project Representatives to carry out such responsibilities at the site.

7.2.2 Such Project Representatives shall be selected, subject to Owner's approval, employed and directed by the Designer, and the Owner shall compensate the Designer for such services in a manner mutually agreed to by the Owner and Designer in writing. The provisions of Article 7.1.6(6) will apply to such Project Representatives.

7.2.3 Through the services of such Project Representatives, the Designer shall endeavor to provide further protection for the Owner against defects and deficiencies in the work.

#### 7.3 Additional Services

Additional Services, as required by the Owner, shall be provided by the Designer only when authorized in writing by the Owner, prior to performance of the services, as an amendment to the contract and shall be paid for by the Owner as hereinbefore provided. Additional services may include, but are not limited to, the following:

7.3.1 Preparation of additional documents required on a split phase project within the original contract.

7.3.2 Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.

7.3.3 Providing interior design and other services required for the selection of furniture and furnishings, and movable equipment.

7.3.4 Providing extensive Program revisions during the Program Completion Phase when the necessity of such as additional services is authorized in writing by the Owner.

7.3.5 Providing any other special services not otherwise included in the Contract or not customarily furnished in accordance with generally accepted Designer's practice.

7.3.6 Providing prolonged contract administration and inspection of construction should the contract time, as may be extended, be exceeded by more than 25 percent due to no fault of the Designer.

## ARTICLE 8

### DESIGNER'S ACCOUNTING RECORDS

8.1 Records of Direct Reimbursable Expenses, and expenses pertaining to Additional Services on the Project, and for services performed on the basis of multiplier times Direct Personnel Expense shall be kept on the basis of generally accepted accounting principles and shall be furnished and/or made available to the Owner or his authorized representative on request.

ARTICLE 9  
TERMINATION OF CONTRACT

9.1 The Contract between Owner and Designer may be terminated by either party upon seven days written notice to the other party, should said other party fail to perform in accordance with its terms, through no fault of the terminating party.

9.2 In the event of termination by the Owner due to failure of the Designer to perform satisfactorily, or if the Contract is terminated by mutual consent, the Designer shall receive no additional compensation beyond that already paid for the last satisfactorily completed phase. Any work done shall become the property of the Owner to be used at his discretion without additional compensation to the Designer. No compensation shall be paid to the Designer for any uncompleted phase.

ARTICLE 10  
ABANDONMENT OR SUSPENSION

10.1 If any work designed or specified by the Designer is abandoned or suspended in whole or in part by the Owner, the Designer is to be paid for the Services rendered up to receipt of written notice from the Owner, as follows:

(1) If the abandonment or suspension occurs at the completion of a Phase, the Designer shall be paid the full amount due on completion of such phase as described in Article 6.1.1.

(2) If the abandonment or suspension occurs during a phase, the Designer shall submit to the Owner all documents prepared by him up to receipt of written notice from the Owner, and the Owner shall compensate the Designer up to the percentage completion of that phase.

10.2 Should the Project be reactivated, the new base fixed fee will be computed on the basis of the revised funds Available For Construction. The Designer's fee for the phases of work required to complete the Project shall be the percentages for such phases stated in Article 6.1.1 applied to the new base fixed fee.

ARTICLE 11  
OWNERSHIP OF DOCUMENTS

11.1 Drawings and Specifications are, and shall remain, the property of the Owner whether the Project for which they are made is executed or not. Such documents may be used by the Owner to construct one or more like projects without the approval of, or additional compensation to, the Designer. The Designer shall not be liable for injury or damage resulting from re-use of drawings and specifications if the Designer is not involved in the re-use project. Prior to re-use of construction documents for a project in which the Designer is not also involved, the Owner will remove and obliterate from such documents all identification of the original Designer, including name, address and professional seal or stamp.

11.2 Upon completion of the Project, tracings shall remain in the files of the Designer, with record drawings (as built) being furnished to the Owner and the User Agency, as called for in Article 7.1.7. The Designer shall have the right to re-use the Construction Documents on other projects not constructed for the Owner.

11.3 The right of ownership provided for above shall not be transferable.

ARTICLE 12  
SUCCESSORS AND ASSIGNS

12.1 The Owner and the Designer each binds himself, his partners, successors, assigns and legal representatives to the other party to the Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of the Contract. Neither the Owner nor the Designer shall assign, sublet or transfer his interest in the Contract without the written consent of the other.

ARTICLE 13  
EXTENT OF AGREEMENT

13.1 The Contract and this Manual represent the agreement between the Owner and the Designer. The Contract may be amended only by written instrument signed by the Owner and the Designer.

ARTICLE 14  
GOVERNING LAW

14.1 The Contract shall be governed by the laws of the State of Louisiana.

ARTICLE 15  
OTHER CONDITIONS

15.1 Insurance - Prior to the signing of the Contract between the Owner and the Designer, the Designer shall furnish to the Owner proof of the following insurance coverages:

15.1.1 Comprehensive General Liability insurance to include coverage for Contractual Liability, Completed Operation and Broadform property damage with minimum limits of \$500,000 per accident/occurrence.

15.1.2 Comprehensive Automobile Liability Insurance with minimum limits of \$500,000 per accident/occurrence.

15.1.3 Worker's Compensation to include all State endorsements and Employer Liability limits of at least \$100,000.

15.1.4 Professional Liability (E & O) as follows:

Minimum Limit of Liability	Construction Cost
\$ 100,000	Up to \$500,000
\$ 250,000	\$500,000 up to \$1,500,000
\$ 500,000	\$1,500,000 up to \$5,000,000
\$ 750,000	\$5,000,000 up to \$10,000,000
\$1,000,000	\$10,000,000 up to \$20,000,000
To be determined by Owner	Over \$20,000,000

No deductible shall be in excess of 5 percent of the limit of liability. In the event of a claim against this policy, the Designer shall arrange for the restoration of the limit of liability so that full coverage is maintained at all times. This policy shall be written with first dollar defense coverage endorsement.

15.1.5 The Prime Designer shall be fully responsible to the Owner for his Associates' and his professional Consultants' work. Professional Liability coverage for the total project design (including all Professional Consultants) rests solely with the Prime Designer. In the case of Joint Ventures, Joint Venture Professional Liability Coverage shall be required in accordance with the above limits. The Professional Liability Insurance shall remain in force for two years after completion and acceptance of the Project.

15.2 Affidavit - The Designer, on signing the Contract, shall submit to the Owner, on such form as the Owner shall designate, a Non-Collusion Affidavit.

15.3 When the Time Schedule has been established by the Owner and Designer as described in Article 3.3.1, a Completion Date shall be set up for delivery of 100 percent of Construction Documents to the Owner. This date shall take into account the anticipated review periods between phases. If such review periods are longer than those indicated in the Time Schedule or if the Designer is delayed for other reasons through no fault of his own, then the Completion Date shall be extended accordingly, provided the Designer makes such request in writing before starting the subsequent phase and the Owner approves such as justified.

15.4 Arbitration

All claims, disputes and other matters arising from the Contract shall, at the option of the Owner, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the Construction Industry Association Rules of the American Arbitration Association. Any such

arbitration proceeding shall, at the option of the Owner, be consolidated with or joined to other arbitration proceedings between the Owner and other persons or entities under contract with the state for the construction, repair or alterations of the project in question.

## **APPENDIX A LOUISIANA BUILDING CODE FOR STATE OWNED BUILDINGS**

In accordance with Act 706, all building projects undertaken by the State of Louisiana shall be designed to conform to the specific code requirements of the Louisiana Building Code for State Owned Buildings. This code is described as follows, effective September 12, 1975.

“To amend Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950 by adding thereto a new Part to be designated as Part IV thereof, comprising Sections 1721 through 1724, relative to the standardization of a building code for the construction of state buildings or extensions thereto.”

Be it enacted by the Legislature of Louisiana:

Section 1. Part IV of Chapter 8 of Title 40 of the Louisiana Revised Statutes of 1950, comprising Sections 1721 through 1724, is hereby enacted to read as follows:

### **PART IV: LOUISIANA BUILDING CODE FOR STATE OWNED BUILDINGS**

#### 1721. Declaration of policy

In order to insure the public health and safety and to facilitate the efficient use of state funds in the new construction, alterations, additions or renovations of state buildings, there is hereby created a Louisiana Building Code for State Owned Buildings consisting of the various building codes and standards designated in this Part.

The provisions of this Part should not be construed to supercede any local building codes or standards except as they apply to state owned buildings.

#### 1722. Louisiana Building Code

A. The new construction, alternation, addition or renovation of all state owned buildings for which bids are let after the effective date of this Part must comply with the Rules and Regulations to be promulgated by the Facility Planning and Control Department of the Division of Administration in conformity with the Administrative Procedure Act, which Rules and Regulations shall establish as minimum standards the provisions of the Louisiana Building Code provided in Subsection B hereof.

B. The Louisiana Building Code shall consist of the following designated and described codes and standards:

(1) The Life Safety Code, Standard 101, 1973 Edition as published by the National Fire Protection Association.

(2) Chapter 10-A of the State Sanitary Code (Plumbing) - as promulgated by the Commissioner of the Louisiana Health and Human Resources Administration.

(3) The Standard Building Code - 1973 Edition with 1975 Revisions as published by the Southern Building Code Congress.

(4) The Standard Mechanical Code - 1971 Edition as published by the Southern Building Code Congress.

(5) The National Electric Code - 1975 Edition (NFPA No. 70-1975) as published by the National Fire Protection Association.

C. All of the above designated and described codes and standards shall include all later editions and revisions as now or hereinafter provided.

D. In all cases of conflict between the State Sanitary Code and the Standard Mechanical Code, the provisions of the State Sanitary Code shall be used. In all cases of conflict between the Life Safety Code and any of the above codes, the provisions of the Life Safety Code shall be used.

#### 1723. Administration; exceptions

The Louisiana Building Code shall be administered by the Facilities Planning and Control Department of the Division of Administration. Provided, however, that nothing contained herein shall affect the State Fire Marshal and his jurisdiction on matters of life safety and related areas as provided by Part III of Chapter 7 of this Title, and provided further that the Commissioner of the Louisiana Health and Human Resources Administration shall administer the provisions of Chapter 10-A of the State Sanitary Code relative to plumbing.

#### 1724. Building permits and Occupancy permits

The building permit, where required, will be issued to the building contractor by the parish or the municipality when the plans and specifications have been approved by the State Fire Marshal, Commissioner of the Louisiana Health and Human Resources Administration, Facility Planning and Control Department and the permit fee has been paid in full by the contractor to the parish or municipality.

The occupancy permit will be issued to the using agency when the building construction has been approved by the State Fire Marshal, Commissioner of the Louisiana Health and Human Resources Administration and the Facility Planning and Control Department.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

NOTE: It shall be the responsibility of the Designer to verify (with Facility Planning and Control, the State Fire Marshal and the Division of Health) the latest edition of the described codes and standards in effect for use on a Project. As of the date of publication of this Manual, the following are the latest dates on the codes listed above in 1722(B):

(1) 1981 except for Health Care, which remains 1973.

(2) January, 1974.

(3) 1982, including Appendix J concerning Energy Conservation.

(4) 1979.

(5) 1981.

J. Roger Magendie  
Director

## **RULE**

### **Department of Health and Human Resources Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, is deleting from the Title XIX Medical Assistance Program, effective October 1, 1982, the drugs listed in the Notice of Intent published in the August 20, 1982 *Louisiana Register*. These drugs are related and similar to those drugs previously listed in the Emergency Rule published in the *Louisiana Register* of November 20, 1981.

This action is necessary to allow the Medical Assistance Program to expand on the previously deleted drugs which were published in the *Federal Register* of October 21 and 30, 1981 (46 FR 51646 and 54305).

The products listed below are regarded by the FDA to be identical, related or similar to those published in the above referenced *Federal Register* announcements.

A. Certain Topical Anti-Infective Drug Products - Vioform-HC, a combination of iodochlorhydroxyquin and hydrocortisone, with or without other ingredients:

Identical, Similar and Related Products

1. Hydrocortisone w/iodochlorhydroxyquin Cream (Wollins)
2. Hydrocortisone w/iodochlorhydroxyquin Cream (Fougera)
3. Hydrocortisone w/iodochlorhydroxyquin Cream (CMC)
4. Bafil Cream (Scruggs)
5. Cortin Cream (C & M Pharm.)
6. Domeform-HC Cream (Dome)
7. Durel-Cort V Cream (Durel)
8. Hexaderm I.Q. Cream (Amfre-Grant)
9. Mity-Quin Cream (Reid-Provident)
10. Epiform-HC Cream (Delta Drug)
11. Idocort Cream (Ulmer)
12. Lanvisone Cream (Lannett)
13. Oxyquin Cream (Moore/Kirk)
14. Pedi-Cort-V Cream (Pedinol)
15. Vio-Hydrocort Cream (Columbia Medical)
16. Vioquin HC Cream (Scott-Alison)
17. Viotag Cream (Tutag)
18. Hysone Ointment (Mallard)
19. Dek-Quin Lotion (Truxton)
20. HC-Form Jelly (Recsei)
21. Viopramosone Cream (Ferndale)
22. Demarex Cream (Hyrex Pharm.)
23. F-E-P Cream (Boots)
24. G.M.D. Cream (Columbia Drug)
25. Iodosone Cream (Century Pharm.)
26. Quinson Cream (Sutliff & Case)
27. Stera-Form Cream (Mayrand)
28. Vio Hydrosone Cream (North American)
29. Lidaform-HC Cream (Dome)
30. Pentarcort Cream (Dalin)
31. Racet LCD Cream (Lemmon)
32. H.V.B. Cream (Bowman)

B. Combination Drug Containing Phenylbutazone, Aluminum Hydroxide, Magnesium Trisilicate: Butazolidin Alka.

C. Certain Rectal Suppositories Containing Hydrocortisone Acetate, Belladonna Extract, and Ephedrine Sulfate - Wyanooids HC Suppositories:

Similar and Related Products

Anusol HC Suppositories and Cream (Parke-Davis)

D. Peripheral Vasodilators - Vasodilan: Isoxuprine Hydrochloride.

Identical, Similar and Related Products

1. Vaso Tab. (Bolar)
2. Vasomast Tab. (Generix)
3. Varisan F. Tab. (Bolar)
4. Vasodigen Tab. (Generix)
5. Vasoprine Tab. (Spencer-Meade)
6. Isolait Tab. (Elder)
7. Isoxuprine HCl Tab. (Premo)

E. Pathibamate: Meprobamate with Tridihexethyl Chloride.

Identical, Similar and Related Products

1. Meprobamate and Tridihexethyl Chloride Tablet (Purepac)
2. Meprobamate and Tridihexethyl Chloride Tablet (United Research)
3. Meprobamate and Tridihexethyl Chloride Tablet (Columbia Medical)
4. Meprobamate and Tridihexethyl Chloride Tablet (Murray Drug)

5. Meprobamate and Tridihexethyl Chloride Tablet (Bioline)

6. Meprobamate and Tridihexethyl Chloride Tablet (Dixon-Shane)

7. Meprobamate and Tridihexethyl Chloride Tablet (Stayner Div.)

8. Meprobamate and Tridihexethyl Chloride Tablet (Premo)

9. Tri-Bamate-200 and 400 Tablets (Three P Products)

10. Trihexybamate Tablet (Schein)

11. Tribamate Tablet (Parmed)

12. Tri-Bamate Tablet (Veratex Corp.)

13. Tri-Bamate Tablet (More Drug Exchange)

14. Spenpath Tablet (Spencer Mead)

15. Spasmate Tablet (Tutag)

F. Certain Anticholinergics/Antispasmodics in Combination with a Sedative - Librax: Chlordiazepoxide Hydrochloride and Clidinium Bromide.

Identical, Similar and Related Products

1. Clindex Capsule (Rugby)
2. Clinoxide Capsule (Geneva Generics)
3. Lidinium Capsule (Spencer-Mead)
4. Chlordinium Capsule (Bengtson-Wahl)
5. Chlordinium Capsule (Bioline)
6. Chlordinium Capsule (Bomiseco)
7. Chlordinium Capsule (Dixon-Shane)
8. Chlordinium Capsule (Gramercy)
9. Chlordinium Capsule (Moore Drug Exchange)
10. Chlordinium Capsule (Murray Drug)
11. Chlordinium Capsule (Parmed)
12. Chlordinium Capsule (Premo)
13. Chlordinium Capsule (Richie)
14. Chlordinium Capsule (Scrip-Physician Supply)
15. Chlordinium Capsule (Veratex)
16. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Ascot)
17. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Barr)
18. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Columbia)
19. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Generix)
20. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Schein)
21. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Regal)
22. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Stayner)
23. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (3P Prods.)
24. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Towne)
25. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (URL)
26. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Vanguard)
27. Chlordiazepoxide Hydrochloride with Clidinium Bromide Capsule (Zenith)

G. Peripheral Vasodilators: Roniacol - Nicotiny Alcohol and Nicotiny Alcohol Tartrate.

Identical, Similar and Related Products

1. Nicotiny Alcohol Tartrate Tablet (Bioline)
2. Nicotiny Alcohol Tartrate Tablet (Bolar)
3. Nicotiny Alcohol Tartrate Tablet (Geneva Generics)
4. Nicotiny Alcohol Tartrate Tablet (Gramercy)
5. Nicotiny Alcohol Tartrate Tablet (Moore Drug Exchange)
6. Nicotiny Alcohol Tartrate Tablet (Murray)
7. Nicotiny Alcohol Tartrate Tablet (Parmed)

8. Nicotiny Alcohol Tartrate Tablet (Rosow)
9. Nicotiny Alcohol Tartrate Tablet (Rugby)
10. Nicotiny Alcohol Tartrate Tablet (Schein)
11. Nicotiny Alcohol Tartrate Tablet (Vanguard)
12. Nicotiny Alcohol Tartrate Tablet (Veratex)
13. Nicotiny Alcohol Tartrate Tablet (Elder)
14. Nicotiny Alcohol Tartrate Tablet (Pharmadyne)

H. Various Ophthalmic Preparations Containing an Anti-histamine: Prefrin-A Ophthalmic Solution - Phenylephrine Hydrochloride, Pyrilamine Maleate, and Antipyrine.

Identical, Similar and Related Products

1. Albalon-A (Allergan)
2. Vasocon-A (Cooper)
3. Naphcon-A (Alcon)
4. Vernacel (Professional Pharmacal)

I. Combination Drugs Containing Theophylline, Ephedrine and Hydroxyzine: Marax.

Identical, Similar and Related Products

1. Theo-Drox Tablet (Columbia Medical)
2. Hydrophed Tablet (Rugby/Darby)
3. Theophedrine Tablet (Premo)
4. Theophozine Tablet (Spencer-Mead)
5. Theozine Tablet (Schein)

J. Peripheral Vasodilators - Cyclandelate

Any drug containing cyclandelate, alone or in combination, is regarded as falling under the scope of this DESI notice as an identical, similar, or related drug.

Roger P. Guissing  
Secretary

#### **RULE**

##### **Department of Health and Human Resources Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, implemented enforcement of support orders, effective October 1, 1982.

This action provides for continued enforcement of child support orders in arrears, posting of bond and continued wage withholding at the courts' discretion as provided by Louisiana R.S. 46:236.3.

Roger P. Guissing  
Secretary

#### **RULE**

##### **Department of Health and Human Resources Office of Family Security**

The Louisiana Department of Health and Human Resources (DHHR) is adopting Rules to administer the Low Income Home Energy Assistance Program (LIHEAP) Block Grant federal funding for fiscal year 1982-83. These federal funds will be administered in accordance with Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, and federal regulations as published in the *Federal Register*, Volume 47, Number 129, Tuesday, July 6, 1982, pages 29472-29493.

The Department of Health and Human Resources, Office of Family Security, is responsible for administration of the LIHEAP

Block Grant. This program assists low income households with the rising cost of home energy.

Roger P. Guissing  
Secretary

#### **RULE**

##### **Department of Health and Human Resources Office of Family Security**

The Department of Health and Human Resources, Office of Family Security, implemented withholding of unemployment benefits as a method of collecting unmet support obligations owed in both AFDC and Non-AFDC cases, effective October 1, 1982. This action is authorized by Section 2335 of Public Law 97-35, La. R.S. 23:1693, La. R.S. 23:1600(8), La. R.S. 46:236.1(n), and required by the Omnibus Budget Reconciliation Act of 1981.

Roger P. Guissing  
Secretary

#### **RULE**

##### **Department of Insurance Life and Health Division**

The Department of Insurance hereby adopts the following regulation:

#### **REGULATION 33**

##### **MEDICARE SUPPLEMENT INSURANCE POLICIES**

Section 1. Purpose.

The purpose of this regulation is to implement Act 146 Louisiana Legislature 1981 so as to provide reasonable standardization and simplification of terms and coverages of Medicare Supplement insurance policies in order to facilitate public understanding and comparison and to eliminate provisions contained in Medicare Supplement insurance policies which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims and to provide for full disclosure in the sale of such coverages.

Section 2. Authority.

This regulation is issued pursuant to the authority vested in the Commissioner under R.S. 22:224.

Section 3. Applicability and Scope.

This regulation shall apply to all Medicare Supplement policies as defined in R.S. 22:224 (B).

Section 4. Effective date.

This regulation shall be effective 90 days after the date of adoption or promulgation of the regulation.

Section 5. Definitions.

A. "Medicare Supplement Coverage" is a policy of accident and sickness insurance as defined in R.S. 22:224B (1).

B. The term "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Hospital Association.

(a) The definition of the term "hospital" shall not be more restrictive than one requiring that the hospital:

1. Be an institution licensed as a hospital and operated pursuant to law; and
2. Be primarily and continuously engaged in providing or

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operating, either on its premises or in facilities available to the hospital on a pre-arranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic and major surgery facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which a charge is made; and

3. Provide 24 hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).

(b) The definition of the term "hospital" may state that such term shall not be inclusive of:

1. Convalescent homes, convalescent, rest, or nursing facilities; or

2. Facilities primarily affording custodial, educational or rehabilitatory care; or

3. Facilities for the aged, drug addicts or alcoholics; or

4. Any military or veterans hospital or soldiers home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis where a legal liability exists for charges made to the individual for services.

C. "Skilled nursing facility" shall be defined in relation to its status facilities, and available services.

(a) A definition of such home or facility shall not be more restrictive than one requiring that it:

1. Be operated pursuant to law;

2. Be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;

3. Be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;

4. Provide continuous 24 hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and

5. Maintains a daily medical record of each patient.

(b) The definition of such home or facility may provide that such term shall not be inclusive of:

1. Any home, facility or part thereof used primarily for rest;

2. A home or facility for the aged or for the care of drug addicts or alcoholics;

3. A home or facility primarily used for the care and treatment of mental diseases or disorders or custodial or educational care.

D. With respect to the term "accident", "accidental injury" and "accidental means" the definition shall employ "result" language and shall not include words which establish an "accidental means" test or use words such as "external, violent, visible wounds" or similar words of descriptive or characterization. The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injuries sustained by the insured person which are the direct cause independently of disease, bodily infirmity or other cause of the loss and occur while the insurance is in force." Such definitions may provide that injuries shall not include injuries to the extent benefits are provided under any workers' compensation, employers' liability or similar law.

E. "Sickness" shall not be defined to be more restrictive than the following: Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force. A definition of sickness may provide for a probationary period which will not exceed 30 days from the effective date of the coverage of the insured person. The definition may be further modified to exclude sickness or disease to the extent benefits are provided under any workers' compensation, occupational disease, employers' liability or similar law.

F. The definition or description of "physician" may be restricted to a type of physician to the extent allowed by law. The insurer may also include terms such as "duly qualified physician" or "duly licensed physician." The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority.

G. The definition or description of "nurse" may be restricted to a type of nurse, such as registered graduate professional nurse (R.N.), licensed practical nurse (L.P.N.), or licensed vocational nurse (L.V.N.). If the words "nurse", "trained nurse" or "registered nurse" are used without definition, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative Rules of the licensing or registry board of this state.

H. A Medicare supplement policy shall include a definition of "Medicare." Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Amended," or "Title 1, Part 1 of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

I. "Mental or nervous disorders" shall not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder of any kind.

J. "Replacement" is any transaction wherein new Medicare supplement insurance is to be purchased and it is known to the agent, broker or insurer at the time of application that, as a part of the transaction, existing accident and health insurance has been or is to be lapsed or the benefits thereof substantially reduced.

K. "One period of confinement" means consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 60 days.

#### Section 6. General Policy Provisions.

The following shall be applicable to "Medicare Supplement Coverage." These are minimum standards and do not preclude the inclusion of additional benefits in such coverages:

A. Pre-existing condition limitations shall not exclude coverage for more than six months after the effective date of coverage under the policy for a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of the coverage;

B. The term "Medicare benefit period" shall mean the unit of time used in the Medicare program to measure use of services and availability of benefits under Part A Medicare hospital insurance;

C. The term "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare to the extent recognized as reasonable by Medicare. Payment of benefits by insureds for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims;

D. Coverage, when issued, shall not be subject to any exclusions, limitations, or reductions (other than as permitted in this regulation and other applicable laws and regulations) which are inconsistent with the exclusions, limitations, or reductions permissible under Medicare, other than a provision that coverage is not provided for any expenses to the extent of any benefit available to the insured person under Medicare;

E. Coverage shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents; and

F. Coverage shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and co-payment percentage factors. Premiums may be changed to correspond with such changes;

G. Premium charged for Medicare supplement policies shall be presumed unreasonable in relation to the benefits provided if the anticipated credible loss ratio for the policy is less than 60 percent on individual policies and 75 percent on group. In determining the credibility of the anticipated loss ratio, due consideration shall be given to all relevant factors included in R.S. 22:224 (E).

#### Section 7. Minimum Benefit Provisions.

Medicare Supplement Coverages shall provide at least the following benefits to an insured person:

A. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare Benefit period;

B. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

C. Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days;

Coverage of 20 percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of \$200 of such expenses and to a maximum benefit of at least \$5000 per calendar year.

E. A policy issued as a "Medicare Supplement Coverage" shall not include, when issued, limitations or exclusions if such limitations or exclusions are more restrictive than those of Medicare for any type of care covered under such policy.

F. No policy may be designed or referred to as Medicare Supplement, Medi-Gap, or words of similar import, unless the policy complies with all the provisions of R.S. 22:224 and this regulation.

#### Section 8. Disclosure Requirements.

A. Insurers issuing policies under this part shall provide to the policyholder, a Medicare supplement buyer's guide in a form prescribed by the Commissioner. Except in the case of a direct response insurers, delivery of the buyer's guide shall be made at the time of application and acknowledgement of receipt of certification of delivery of the buyer's guide shall be provided to the insurer. Direct response insurers shall deliver the buyer's guide upon request but not later than at the time the policy is delivered.

B. Medicare supplement policies, other than those issued pursuant to direct response solicitation, shall have a notice prominently and conspicuously printed on the first page of the policy, or attached thereto, stating in substance that the policyholder shall have the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Policies issued pursuant to direct response solicitation to Medicare eligible persons shall have a notice prominently and conspicuously printed on the first page of the policy, or attached thereto, stating in substance that the policyholder shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if after examination of the policy the policyholder is not satisfied for any reason.

C. No Medicare supplement policy subject to this chapter shall be delivered or issued for delivery in this State unless an appropriate outline of coverage is completed and delivered to the applicant at the time application is made and, except for Medicare supplement policies issued by direct response insurers, a copy of the certification form signed by the prospective insured which acknowledges receipt of such outline of coverage is returned to the insurer. For direct response insurers, an appropriate outline of coverage shall be completed and delivered to the prospective insured with any information requested, or with the policy if the prospective insured's first communication with the insurer is to submit a completed application.

D. An outline of coverage in the form prescribed below shall be issued for all Medicare supplement policies. The items included in the outline of coverage must appear in the sequence prescribed:

(COMPANY NAME)  
MEDICARE SUPPLEMENT COVERAGE  
OUTLINE OF COVERAGE

1. Read Your Policy Carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!

2. Medicare Supplement Coverage - Policies of this category are designed to supplement Medicare by covering some hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and co-payment provisions which may be in addition to those provided by Medicare and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing and taking medicine (delete if such coverage is provide).

3. (For agents:) Neither (insert company's name) nor its agents are connected with Medicare.

4. (A brief summary of the major benefit gaps in Medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts, provided by the Medicare Supplement Coverage in the following order:)

<b>Service</b>	<b>Benefit</b>	<b>This Policy Pays</b>	<b>You Pay</b>
<b>HOSPITALIZATION</b> Semi-private room and board, general nursing and miscellaneous hospital services and supplies Includes meals, special care units, drugs, lab test, diagnostic x-rays, medical supplies, operating and recovery room, anesthesia and rehabilitation services.	First 60 days	All but \$160	
	61st to 90th day	All but \$ 40	
	90th to 150th day	All but \$ 80	
	Beyond 150 days	Nothing	
		<b>Medicare Pays</b>	<b>This Policy Pays</b>
			<b>You Pay</b>
<b>Service</b>	<b>Benefit</b>		
Posthospital skilled nursing care. . In a facility approved by Medicare you must have been in a hospital for at least three days and enter the facility within 14 days after hospital discharge.	First 20 days	100% of costs	
	Additional 80 days	All but (\$20) a day	
	Beyond 100 days	Nothing	
<b>Medical Expense</b>	Physician's services in-patient medical services and supplies at a hospital, physical and speech therapy and ambulance.	80% of reasonable charge (after \$60 deductible)	

5. (A statement that the policy does or does not cover the following:)

1. Private duty nursing.
2. Skilled nursing home care costs (beyond what is covered by Medicare.)
3. Custodial nursing home care costs.
4. Intermediate nursing home care costs.
5. Home health care (above number of visits covered by Medicare).
6. Physician charges (above Medicare's reasonable charge).
7. Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay).
8. Care received outside of U.S.A..
9. Dental Care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.

6. (A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays or in any other manner operates to qualify payment of the benefits described in (4) above, including conspicuous statements:)

1. (That the chart summarizing Medicare benefits only briefly described such benefits.)
2. (That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitation.)

E. (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of right to change premium.)

#### Section 9. Replacement.

Requirements for replacement. The requirements for replacement of an accident and sickness insurance policy by a

Medicare supplement policy are as follows:

- (1) Application forms shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness insurance presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.
- (2) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described below. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant upon issuance of the policy, the required notice.
- (3) An insurer, within five working days from the receipt of an application at its policy issuance office, shall furnish a copy of such notice to the insurer whose policy is being replaced.

#### NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE

According to (your application) (information you have furnished), you intended to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

A. Health conditions which you may presently have, (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

B. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

C. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, re-read it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

**NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF MEDICARE SUPPLEMENT INSURANCE  
FOR DIRECT RESPONSE INSURER**

According to (your application) (information you have furnished) you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 10 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

(1) Health conditions which you may presently have, (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

(3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within 10 days if any information is not correct and complete, or if any past medical history has been left out of the application.

Sherman A. Bernard  
Commissioner of Insurance

**RULE**

**Department of Natural Resources  
Office of Environmental Affairs  
Environmental Control Commission**

Under the authority of the Louisiana Environmental Affairs

Act, La. R.S. 30:1051 et seq., Sections 1066 (1) (3) and 1124 B(2), and in accordance with the provisions of the Administrative Procedure Act, La. R.S. 49:951 et seq., the Louisiana Environmental Control Commission (ECC) initiated Rule making procedures to amend Section 10.1.B.6 of the Rules of Procedure of the Louisiana Environmental Control Commission at its June 24, 1982 meeting. The proposed amendment was published in the July 20, 1982 *Louisiana Register*, and was forwarded to and found acceptable by the Joint Committee on Natural Resources.

Upon the acceptance by the Joint Committee on Natural Resources, the Commission adopted the amendment at its August 26, 1982 meeting. The amendment to Section 10.1.B.6 changes the term **permit to standard permits** to read, "in regard to solid waste management, authority to perform all action delegable to the Assistant Secretary under the Act, except that the Commission specifically retains the authority to issue registrations, standard permits, and compliance schedules and modifications thereto for any solid waste disposal facility." The purpose of this amendment is to provide authority for the Assistant Secretary to issue routine interim permits for the operation of several hundred facilities governed by the Solid Waste Management Plan Rules and Regulations.

Persons requesting copies and/or further information concerning the amendment listed above may contact Ms. Barbara Delatte, Office of Environmental Affairs, Solid Waste Management Division, Box 44066, Baton Rouge, LA, 70804, or phone (504) 342-1216.

B. Jim Porter  
Assistant Secretary

**RULE**

**Department of Public Safety  
Office of State Fire Marshal**

AMENDMENT TO L.A.C. 17-4:15 by  
DELETING REQUIREMENT

15.2 sub paragraphs A and B

The Fire Marshal for the State of Louisiana hereby adopts the following amendment to administrative Ruling:  
L.A.C. 17-4:15 Inspection of Prisons

L.A.C. 17-415.2 The basic requirements for prisons are as follows:

A. The amount of gross square feet per prisoner required shall be a sufficient amount to safely evacuate the premises in the event of a fire.

B. No more prisoners shall be incarcerated in any cell block than can be safely evacuated from the cell block in the event of a fire.

Carrol L. Herring  
State Fire Marshal

**RULE**

**Department of Public Safety  
Office of State Fire Marshal**

INSULATION

The Fire Marshal for the State of Louisiana hereby adopts