

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

Alternative Livestock—Imported Exotic Deer and Imported Exotic Antelope, Elk, and Farm-Raised White-Tailed Deer
(LAC 7:XXI.1501-1523)

In accordance with the Administrative Procedure Act, specifically R.S. 49:953(B), and R.S. 3:3101 the commissioner of Agriculture and Forestry finds that these emergency amendments to the permanent rules regulating imported exotic deer and antelope, elk and farm-raised white-tailed deer for commercial purposes in the state of Louisiana are necessary to prevent imminent peril to the health, safety and welfare of the citizens of Louisiana.

The commissioner of Agriculture and Forestry finds that it is necessary to prohibit "canned hunts" and to increase the acreage of farms upon which farm-raised white-tailed deer may be harvested. The harvesting of alternative livestock requires licensees to plan such harvesting months in advance of the actual harvesting. Failure to immediately make these changes to the permanent rules and regulations would deprive licensees of sufficient lead time to make adequate plans for harvesting in a manner that would not be prohibited under these rules and regulations as a "canned hunt" and would deprive potential licensees of adequate time to establish farms with the minimum acreage being required under these amendments. Such deprivation may lead to severe economic instability of the alternative livestock industry and subsequent economic demise of that industry.

Permanent amendments to the regulations are being promulgated. However, the time delay required by the Administrative Procedure Act precludes adoption of permanent amendments to the regulations in a timely fashion.

These emergency amendments to the permanent regulations become effective at 6 p.m. on April 16, 1998. These emergency amendments to the permanent regulations shall remain in effect 120 days from this day or until the final amendments become effective whichever may occur first.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 15. Alternative Livestock—Imported Exotic Deer and Imported Exotic Antelope, Elk and Farm-Raised White-Tailed Deer

§1501. Statement of Authority and Purpose

The commissioner of Agriculture and Forestry heads and directs the Department of Agriculture and Forestry and exercises all functions of the state relating to the promotion, protection and advancement of agriculture and forestry. The commissioner is authorized by law and does hereby adopt these rules and regulations for the purposes of promoting, protecting and advancing agriculture and to implement the laws adopted by the legislature, including those in Part I of

Chapter 19-A of Title 3 of the Revised Statutes, giving the commissioner the specific power to regulate farm-raised exotic animals, including imported exotic deer and imported exotic antelope, elk and farm-raised white-tailed deer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1503. Definitions

For purposes of these rules and regulations the following words and phrases shall have the meaning given herein.

Alternative Livestock—any imported exotic deer and imported exotic antelope, elk and farm-raised white-tailed deer.

Canned Hunt—harvesting farm-raised alternative livestock in a manner that is similar to but substantially inconsistent with those methods and techniques generally employed in the sport known as hunting and where those inconsistencies result in the taking of the farm raised alternative livestock being a certainty.

Commercial Purpose—the keeping, breeding, raising, containing, harvesting, killing, slaughtering, buying, selling, trading, or transferring ownership of alternative livestock, any alternative livestock carcass or part thereof, with the intent to receive money, goods, services, livestock or any other type of compensation in connection therewith.

Commissioner—the Commissioner of Agriculture and Forestry.

Department—the Louisiana Department of Agriculture and Forestry.

Elk—any animal of the species and genus *cervus canadensis*.

Farm—any area of land or water, regardless of size, used to breed, raise or keep farm-raised alternative livestock for a commercial purpose, including but not limited to breeding farms or propagating preserves. This definition does not include areas of land or water which are part of a zoo, game park or wildlife exhibit where the primary purpose is the exhibition of alternative livestock or other animals.

Farm-Raised—any alternative livestock born, raised, or kept within a closed circumscribed fenced area for a commercial purpose. This definition does not include alternative livestock which are part of a zoo, game park or wildlife exhibit where the primary purpose is the exhibition of the alternative livestock or other animals.

Farm-Raised White-Tailed Deer—any animal of species and genus *odocoileus virginianus* which is bred, born, raised and/or kept within a closed circumscribed fenced area for the purpose of buying, selling, or trading in commerce. Farm raised white-tailed deer does not include any white-tailed deer which is part of any zoo, game park, or wildlife exhibit where the primary purpose of the same is the exhibition of white-tailed deer and/or other animals.

Harvesting—the attempt or act of shooting, wounding or killing farm-raised alternative livestock within the enclosure

system of a farm in a manner consistent with those techniques commonly referred to as hunting in Title 56 of the Louisiana Revised Statutes.

Imported Exotic Antelope—any animal of the family *Bovidae* which are not indigenous to North America, except animals of the tribes *Bovine* (cattle) and *Caprine* (sheep and goats).

Imported Exotic Deer—any animal of the family *Cervidae* which are not indigenous to North America, including but not limited to Red Deer, Seika Deer and Fallow Deer.

LDWF—the Louisiana Department of Wildlife and Fisheries.

Person—any individual, corporation, partnership or other legal entity.

Quarantine—the requirement, resulting from an order of the department or the State Veterinarian's Office, to secure and physically isolate an animal or animals in a specified confined area to prevent the spread of contagious disease.

White-Tailed Deer—any animal of the species and genus *odociolus virginianus*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1505. Issuance of Farm-Raising License; Renewals

A. Any person who keeps, breeds, raises, contains, harvests, kills, slaughters, buys, sells, trades, or transfers ownership of any type of farm-raised alternative livestock for commercial purposes shall obtain a farm-raising license, from the department prior to engaging in such activity.

B. The department shall not issue any farm-raising license until the application for the farm-raising license and the information requested, including the required plan for the operation of the farm, is approved by the department and the proposed farm passes the department's and LDWF's inspection.

C. Any changes in any information submitted in the original application, occurring during or after the application process, shall be submitted in writing to the department. The department and LDWF must approve, in writing, any change or modification, which shall be in writing, in the written farm operation plan submitted with the original application before such change or modification, may go into effect.

D. A farm-raising license shall be valid for the period beginning with the date of issuance and ending the following June 30 or from July 1 of the year of renewal through the following June 30.

E. A farm-raising license may be renewed each year by the department. A licensee shall submit a written request for renewal, the renewal fee, any proposed modification, which shall be in writing, of the written farm operation plan previously submitted to and approved by the department and any proof requested by the department of compliance by the licensee with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine. If either the written request for renewal or the renewal fee is received by the department after July 31, the

farm-raising license shall be deemed expired, *ipso facto*, retroactive to June 30.

F. In the event that the department determines that a farm does not meet the requirements of or was not complying with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine the farm-raising license may not be renewed by the department.

G. The licensee may contest the department's decision not to renew a farm-raising license by filing a written request for an adjudicatory hearing with the department within 15 days from receipt of the notice of nonrenewal. Such a hearing is to be held in accordance with the provisions of the Administrative Procedure Act. Any such hearing shall be held within 30 days of the request, unless continued for good cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1507. Fees

A. Farm-Raising License Fees

1. The fee for a new farm-raising license shall be \$50.
2. The farm-raising license renewal fee shall be \$50.
3. The department shall waive the farm-raising license fee for any person who obtains a farm-raising license from this department, and who holds a valid game breeders license issued by LDWF for the possession of any alternative livestock at the time these rules and regulations become effective, and who submits a written application within the calendar year that these rules and regulations become effective.

4. The waiver granted in §1507.A.3 applies only to a new farm-raising license and shall not apply to any renewal of a farm-raising license issued by the department under these rules and regulations.

B. Harvesting Permit Fee

1. Each individual intending to harvest or kill any farm-raised alternative livestock at any farm licensed by the department shall obtain a harvesting permit from the department or LDWF, before harvesting or killing any farm-raised alternative livestock, except as provided by §1507.B.3.

2. The fee due to the department for each harvesting permit shall be \$50 which fee shall be collected by the department or ministerially collected for the department by LDWF. Upon collection by LDWF, LDWF shall promptly remit the fee to the department retaining one-half for administrative costs.

3. No licensee or those persons employed by or assisting such licensee harvesting farm-raised alternative livestock to be taken directly to a state or federally approved slaughter facility or capturing farm-raised alternative livestock to be sold or traded for breeding or stocking purposes shall be required to obtain a harvesting permit or pay a fee.

C. Farm-Raised Alternative Livestock Tag Fee

1. Each farm-raised alternative livestock harvested or

killed shall have a farm-raised tag attached to the left ear or left antler of the carcass at the time of kill and the tag shall remain with the carcass at all times, except as provided in §1507.C.3.

2. The farm-raised alternative livestock tag shall be provided by the department at a cost of \$5 per tag.

3. No farm-raised tag shall be required for farm-raised alternative livestock which are to be taken directly to a state or federally approved slaughter facility or which are sold or traded alive for breeding or stocking purposes.

4. No harvesting shall occur and no harvesting permit shall be issued if the area of the relevant farm within the enclosure system is less than 300 acres or more 2,500 acres in size unless good cause is shown by the applicant to the commissioner why the issuance of a harvesting permit for an enclosure of a different size is not inconsistent with the intent of Part I of Chapter 19-A of Title 3 of the Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1509. Farm-Raising Licensing Requirements

A. Written Application. Each applicant for a farm-raising license shall submit a completed written application on a form supplied by the department. In addition to any other information that may be requested by the department the applicant shall provide the following information:

1. name, physical address, mailing address and telephone number of the applicant and whether the applicant will own or lease the land. If the land is leased then a copy of the lease shall be provided to the department;

2. the name under which the business will operate, the physical address, mailing address and telephone number of the business, if different than the information provided in §1509.A.1;

3. the business structure, (sole proprietorship, partnership, corporation, limited liability company, joint venture, or otherwise);

4. the name of the person or persons in charge, position, (e.g., owner, manager, etc.), residence address and phone number;

5. the physical location and size of the farm;

6. a topographical map of the farm if 50 acres or more;

7. the species of alternative livestock to be farm-raised;

8. the approximate number of animals to be farm-raised;

9. the complete plan for the operation of the farm including:

a. an enclosure system, including fencing the farm, indicating the location, size, nature and extent of the fencing material and of any right of way related to the farm property;

b. systematic inspection of the enclosure system, including the fence, maintenance, repair and replacement of the fence, keeping the fence and any clearance along either side of the fence clear and verification to the department of compliance with this provision;

c. the capture of any farm-raised alternative livestock that may escape from or wild white-tailed deer that may enter the farm through a breach or opening in the enclosure system or fence;

d. removal of white-tailed deer from the farm prior to completion of the enclosure of the farm;

e. controlling farm-raised alternative livestock population;

f. identification by means of an electronic implant of all white-tail deer born, bought, sold, traded or which otherwise become farm-raised white-tailed deer, which shall include the systematic capture of farm-raised white-tailed deer for implantation purposes;

g. the removal and disposal of all alternative livestock in the event that the farm ceases operation for any reason or upon revocation or nonrenewal of the farm-raising license, including a provision for written notice to the department prior to cessation of farming operation;

h. the type of farming operation records that will be kept;

10. a statement that the applicant shall abide by the requirements of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine;

11. a certified statement that all representations contained in the application, the farm operation plan and attachments are true and correct.

B. Farm Inspection. An applicant shall have the proposed farm physically inspected and approved by the department and LDWF before a farm-raising license may be issued by the department. To obtain department approval a proposed farm shall:

1. be located in a rural area of the state;

2. be securely enclosed by an enclosure system, including fencing, that meets the following specifications:

a. a minimum height, above the relevant ground, of eight feet;

b. enclose an area of not less than 300 acres nor more than 2,500 acres to be eligible for harvesting as provided by §1507.B of these rules and regulations. Applicants seeking eligibility to harvest on farms with enclosures of less than 300 acres or more than 2,500 acres must demonstrate good cause why an enclosure of a different size is not inconsistent with the intent of Part I of Chapter 19-A of Title 3 of the Revised Statutes;

c. a minimum gauge wire of 12½;

d. fencing material of chain link, woven wire, solid panel or welded panel or, if made with any other material, approved in writing by the department, however, welded wire fences shall not be used unless it was approved by LDWF and installed prior to April 22, 1997, but, such welded wire fences, when replaced or partially replaced, shall be replaced by fencing required by these rules and regulations;

3. have drainage sufficient to leave a majority of the farm free from extended periods of standing water;

4. have adequate space and if the total enclosed area of the farm is less than 50 acres, allow at least 5,000 square feet for the first elk or farm-raised white-tailed deer placed on the farm and at least 2,500 square feet for each subsequent elk or farm-raised white-tailed deer;

5. have no condition which may cause noncompliance with or substantial difficulty in complying with Part I of

Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine;

6. not be subject to an objection for good cause related to wildlife made in writing to the department by LDWF, which written objection shall follow within 10 working days of a physical inspection of the proposed farm made concurrently and jointly by the department and LDWF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1511. Grounds for Refusal to Issue or Renew a Farm-Raising License

The commissioner may refuse to issue or renew a farm-raising license for any of the following circumstances:

1. the applicant cannot demonstrate to the satisfaction of the commissioner a competency to operate an alternative livestock farm;

2. the applicant has failed to provide all of the information required in or with the farm-raising license or renewal application, or has provided false information to the department;

3. the applicant has previously refused to permit the department to inspect the farm or to inspect farm records or the applicant has otherwise failed to comply with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine;

4. the department does not approve the farm operation plan;

5. the proposed farm does not pass the department's or LDWF's inspection;

6. the applicant has previously been found in violation of either Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department or any quarantine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1513. Obligations of the Farm-Raising Licensee

A. Identification of Farm-Raised Alternative Livestock

1. All farm-raised white-tailed deer shall be identified by means of an electronic implant implanted as follows:

a. the electronic implant shall be implanted into the subcutaneous tissue at the base of the left ear or in either shoulder;

b. all farm-raised white-tailed deer being brought into Louisiana shall have the electronic implant implanted before entering this state and prior to being released on the farm;

c. farm-raised white-tailed deer born in this state shall have an electronic implant implanted the first time the farm-raised white-tailed deer is captured alive and before the farm-raised white-tailed deer leaves the farm;

d. all white-tailed deer shall be electronically implanted at the base of the left ear immediately upon harvest

whether or not such deer have already been implanted previously. This requirement for electronic implantation is in addition to any and all other requirements for electronic implantation contained in these regulations. This electronic implantation shall remain with the carcass at all times;

e. each electronic implant code shall be listed on the farm-raised white-tailed deer's health certificate and on the bill of sale or certificate of transfer.

2. All farm-raised alternative livestock other than farm-raised white-tailed deer shall be permanently and individually identified as follows:

a. by means of an electronic implant or by a permanent ear tattoo and ear tag;

b. the electronic implant shall be implanted into the subcutaneous tissue at the base of the left ear or in either shoulder;

c. prior to entering the state, alternative livestock, other than farm-raised white-tailed deer, shall be identified as required herein;

d. alternative livestock born in this state, other than farm-raised white-tailed deer, shall be identified as required herein, the first time any such animal is captured alive and before any such animal leaves the farm;

e. the identification number or electronic implant code, and the location thereof, shall be listed on the health certificate and the bill of sale or certificate of transfer.

3. Farm-raised alternative livestock, other than farm-raised white-tailed deer, that will be transported directly to a state or federally approved slaughter facility are exempt from this identification requirement.

4. Farm-raised alternative livestock placed on a farm prior to the effective date of these regulations, other than farm-raised white-tailed deer, are not required to be identified by a permanent ear tattoo and ear tag or electronic implant unless removed alive from the farm.

B. Record Keeping

1. Each licensee shall maintain records, for not less than 36 months, of all sales, deaths, kills, trades, purchases, or transfers of any farm-raised alternative livestock. The records shall include:

a. total number of farm-raised alternative livestock, carcasses, or parts thereof, killed, sold, traded, purchased or transported;

b. name and address of the person to whom each farm-raised alternative livestock, or any carcass, or parts thereof, was sold, traded, delivered, presented or transported;

c. the electronic implant code or identification number of the farm-raised alternative livestock;

d. copies of any health certificates issued;

e. accurate records showing all inspections, maintenance, repairs and replacement to the enclosure system, including the fence and such records shall include the dates and times of each, names of the persons performing services, the location of any breaches of the enclosure system, including the fence and nature and location of any repairs or replacements made to the fence;

f. records customarily kept in the normal course of conducting business and those records required by these rules and regulations.

2. Sellers, traders or transferors of farm-raised alternative livestock, any carcass, or any part thereof, shall furnish the purchaser or transferee with a bill of sale or letter of transfer as verification of the farm-raised status.

3. The furnishing of any false information shall be a violation of these rules and regulations.

C. Enclosure System and Fence Inspection and Maintenance

1. Any licensee shall conduct or shall have conducted a visual ground inspection of the enclosure system, including the fence, along the entire perimeter of the fenced area of the farm not less than weekly. An inspection shall be conducted immediately after any major storm or occurrence of any other force of nature that would cause a reasonable person to be concerned about the integrity of the enclosure system, including the fence.

2. Any licensee shall maintain the enclosure system, including the fence in good repair at all times. Good repair means that farm-raised alternative livestock are not able to leave and wild white-tailed deer are not able to enter through the enclosure system, including the fence, or otherwise.

3. Any licensee who discovers a breach or opening in the enclosure system or fence that would allow farm-raised alternative livestock to leave from or wild white-tailed deer to enter into the enclosed area shall notify, orally and in writing, the department and LDWF of the breach or opening and the department shall notify LDWF within 12 hours.

4. In the event of such a breach or opening the licensee shall immediately close the breach or opening and make all reasonable efforts to determine if farm-raised alternative livestock left from or wild white-tailed deer entered into the area enclosed by the fence.

D. Other Obligations of the Farm Licensee

1. A licensee shall remove white-tailed deer from the farm prior to completion of the fencing and enclosure system of the farm. Removal of the white-tailed deer shall be accomplished to the satisfaction of the department and LDWF pursuant to these regulations.

2. A licensee shall control the population of farm-raised alternative livestock on the farm.

3. A licensee shall make all efforts that a reasonable licensee would make to capture any farm-raised alternative livestock that escapes from the fenced area of the farm and to remove wild white-tailed deer that enters the fenced area of the farm.

4. A licensee shall, in writing, notify the department, at least 10 days prior to placing any alternative livestock on the farm if such alternative livestock was not listed on the original application or on any modification previously approved, in writing, by the department. The department shall promptly notify LDWF following receipt of licensee's notice.

5. A licensee upon cessation of operations, or upon revocation or nonrenewal of the farm-raising license shall remove and dispose of all farm-raised alternative livestock on the farm in accordance with the farm operation plan submitted to and approved by the department or in accordance with specific written instructions issued by the department in the event that circumstances warrant removal and disposal of the

farm-raised alternative livestock to be made in a manner different from the farm operation plan.

6. A licensee shall be responsible for ensuring that any individual who harvests or kills any farm-raised alternative livestock on the licensee's farm does so in accordance with these rules and regulations.

7. A licensee shall harvest or kill farm-raised alternative livestock in accordance with these rules and regulations.

8. A licensee shall provide that all farm-raised alternative livestock have the necessary health certificates and that the farm-raised alternative livestock meet all applicable health requirements.

9. A licensee shall allow authorized representatives of the department and authorized representatives of LDWF to inspect the farm at any time and all books and records at any reasonable time.

10. A licensee shall comply with all provisions of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1515. Health Certificates and Health Requirements

A. Prior to entering Louisiana, all alternative livestock, except those being transported directly to a state or federally approved slaughter facility, shall:

1. meet the general health requirements promulgated in LAC 7:XXI.107;

2. have an entry permit number issued by the State Veterinarian's Office no more than 15 days before entry into Louisiana which entry number shall be included on the certificate of veterinary inspection;

3. have written proof of a negative test for brucellosis in accordance with the *Brucellosis Eradication in Cervidae Uniform Methods and Rules* as and when published by the United States Department of Agriculture, Animal and Plant Health Inspection Service. Until such time as the *Brucellosis Eradication in Cervidae Uniform Methods and Rules* are published, all alternative livestock six months of age and older entering Louisiana, except those being transported directly to a state or federally approved slaughter facility, shall be tested negative for brucellosis within 30 days prior to entry into Louisiana, and written proof thereof shall be provided, unless the alternative livestock originate from a herd which has been officially declared a certified brucellosis free herd by the state of origin;

4. have written proof of a negative test for tuberculosis in accordance with the *Tuberculosis Eradication in Cervidae Uniform Methods and Rules* as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service;

5. prior to any person importing any alternative livestock into Louisiana, LDWF shall be provided by the department a copy of the entry permits or other applicable documents which describe the alternative livestock by species, sex, age and place of origin.

B. Any alternative livestock which has been exposed to brucellosis or tuberculosis shall be quarantined and tested for the diseases to which it has been exposed within 60 days of the date of the quarantine. The quarantine shall remain in effect until removed, in writing, by the State Veterinary Office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1517. Harvesting or Killing of Farm-Raised Alternative Livestock

A. Farm-raised white-tailed deer shall be harvested by killing only from one-half hour before sunrise to one-half hour after sunset during the period of October 1 through January 31 of the following year, as established by the Louisiana Wildlife and Fisheries Commission. Licensees may also harvest at will at any other time from one-half hour before sunrise to one-half hour after sunset upon 48 hours notice to and written approval of the department. Upon receipt of any such notice the department shall, no later than 24 hours before the harvest, notify LDWF.

B. Except for farm-raised white-tailed deer, farm-raised alternative livestock may be harvested or killed at any time from one-half hour before sunrise to one-half hour after sunset unless the commissioner provides otherwise in accordance with the provisions of §1517.C.

C. The commissioner and Louisiana Wildlife and Fisheries Commission may establish, by written order, other dates and conditions for the harvesting or killing of farm-raised alternative livestock as the commissioner deems necessary to carry out the purposes of Part I of Chapter 19-A of Title 3 of the Revised Statutes. Such orders shall be issued by the commissioner in January of each year or as soon thereafter as is practical and published in the January issue of the *Louisiana Register* or in the first available issue after any such order is issued.

D. Prior to harvesting or killing farm-raised alternative livestock, any person, except as provided by §1507.B.3 of these regulations, shall first apply for and obtain a harvesting permit to do so from the department or LDWF by submitting an application on a form supplied by the department.

1. Any harvesting permit issued by the department or LDWF shall be valid only for the time periods stated on the face of the permit.

2. The department may issue or LDWF may ministerially issue a harvesting permit upon written application by any individual or by any farm licensee making application on behalf of the individual and upon receipt of the harvesting permit fee.

3. The applicant shall not be subject to any existing court or administrative order denying the applicants right to harvest.

E. Except as provided by §1507.C.3 of these regulations, any farm-raised alternative livestock harvested or killed, shall have a farm-raised tag attached to the left ear or left antler of the carcass at the time of the kill and the tag shall remain with the carcass at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1519. Prohibitions

A. No farm-raised alternative livestock shall be released into the wild without express written permission from both the department and LDWF.

B. Farm-raised white-tailed deer meat or farm-raised white-tailed deer parts of any kind shall not be bought, sold, traded, or moved in commerce in any way.

C. Farm-raised alternative livestock sold for slaughter, except farm-raised white-tailed deer, the sale of which is prohibited, shall be handled in accordance with state and federal meat inspection laws and regulations.

D. It is a violation of these regulations to sell, purchase, trade, transport, or otherwise transfer any farm-raised alternative livestock for any purpose other than immediate slaughter at a state or federally approved slaughter facility if such farm-raised alternative livestock originates from a herd which is under quarantine for brucellosis or tuberculosis.

E. Canned hunts of farm-raised alternative livestock are prohibited.

F. Failure to comply with any provision of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine is prohibited and each act or omission or each day of a continuing violation shall constitute a separate violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1521. Enforcement

A. The department's and LDWF's authorized representatives may, at any time, enter and inspect all farms on which farm-raised alternative livestock are located for the purposes of issuing, renewing or reviewing farm-raising licenses and to insure compliance with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine.

B. Authorized representatives of the department and LDWF may inspect, during any reasonable hours, any records regarding or relating to any farm-raised alternative livestock.

C. Farm-raised alternative livestock which escapes from the enclosure system of the farm, if not captured by a licensee within 96 hours of the escape, may be captured by authorized representatives of the department or by any law enforcement agency by whatever means deemed necessary by that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

§1523. Penalties

A. The commissioner may suspend or revoke the farm-raising license of any licensee and the harvesting permit

issued to any person found guilty of violating Part I of Chapter 19-A of Title 3 of the Revised Statutes, those portions of Title 56 of the Revised Statutes related to wildlife, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine.

B. The commissioner may, in addition to suspending or revoking any farm-raising license or harvesting permit, impose upon any person charged with violating any provisions of Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department and any quarantine, a fine for up to \$100 per violation for each violation such person is found guilty.

C. These civil penalties may be assessed only by a ruling of the commissioner based on an adjudicatory hearing held in accordance with the Administrative Procedure Act.

D. Any person or licensee subject to an order or decision made pursuant to these regulations may request and receive an adjudicatory hearing before the department to be held in accordance with the Administrative Procedure Act by making written application for same to the department within 15 days of issuance of such order or decision.

E. The commissioner may seek a restraining order, injunctive relief or other relief in a proper court of law to restrain violations of or to compel compliance with Part I of Chapter 19-A of Title 3 of the Revised Statutes, these rules and regulations, the written farm operation plan submitted to and approved by the department or any quarantine or to enforce any order or ruling made by him in an adjudicatory proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:

Bob Odom
Commissioner

9805#006

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

Brucellosis Vaccination (LAC 7:XXI.305, 307 and 309)

The Livestock Sanitary Board, in accordance with the Administrative Procedure Act, specifically R.S. 49:953(B), hereby adopts the following amended emergency rules regulating the brucellosis vaccination requirements for heifers between the ages of four and 12 months. These emergency rules become effective on May 20, 1998 and shall remain in effect 120 days or until the final rules become effective, whichever occurs first.

The Livestock Sanitary Board has permanent regulations, (LAC 7:XXI.305 and 307), requiring all heifers between the ages of four and 12 months of age offered for sale at Louisiana

livestock auction markets to be vaccinated against brucellosis prior to being sold.

These regulations were promulgated at a time when Louisiana was under an accelerated brucellosis eradication program to rid the state of this costly disease of cattle which causes abortions, stillbirths, and weak calves. At that time most states would not accept calves unless they were vaccinated. Now most states have changed their brucellosis vaccination requirements thereby allowing heifers to be imported without a brucellosis vaccination.

Approximately 98,000 or 90 percent of the heifers vaccinated against brucellosis in Louisiana are shipped to other states that now allow the importation of non vaccinated heifers.

The current regulations require Louisiana cattle producers to pay \$2 per heifer for brucellosis vaccination, resulting in an unnecessary cost to Louisiana cattle producers of approximately \$196,000.

The Livestock Sanitary Board has taken steps to amend its permanent regulations to eliminate the brucellosis vaccination requirement for heifers going out of state but the process is such that Louisiana cattle producers will have to pay approximately \$98,000 before the amendments to the permanent regulations can take effect.

The continued imposition of a now useless cost is a burden on Louisiana's cattle industry to such an extent as to constitute an imminent peril to the welfare of that industry, and, consequently, an imminent peril to the welfare of the citizens of Louisiana.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 3. Cattle

§305. Brucellosis Vaccination and Fee

A. - C. ...

D. All heifer calves between four and 12 months of age not vaccinated for brucellosis which are sold through an approved livestock auction market and are to remain in Louisiana more than 30 days must be vaccinated with USDA approved brucellosis vaccine prior to being shipped from said approved livestock auction market. There shall be a fee to be paid by the buyer of \$2 for each heifer calf required to be vaccinated for brucellosis, which fee shall be known as the brucellosis vaccination fee. The brucellosis vaccination fee shall be collected on the date of the sale from the buyer by the approved livestock auction market and forwarded to the Louisiana Department of Agriculture and Forestry no later than the tenth day of the month following the month in which the fee was collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2221 and R.S. 3:2223.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:75 (February 1989), amended LR 22:960 (October 1996), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:

§307. Livestock Auction Market Requirements

A.1.c.iv. ...

d. All heifer calves, between four and 12 months of age not vaccinated for brucellosis, which are to remain in

Louisiana more than 30 days must be vaccinated with USDA approved brucellosis vaccine prior to being shipped from an approved livestock auction market. The responsibility for the brucellosis vaccination of those heifer calves sold through a Louisiana livestock auction market and remaining in Louisiana more than 30 days after the sale shall be placed upon the buyer and the livestock auction market through which said heifer calves are sold. Failure to accomplish this vaccination shall be a violation of this regulation and violators shall be subject to penalties which may be imposed by the Louisiana Livestock Sanitary Board as granted in R.S. 3:2093.

d.i. - g.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2221, and R.S. 3:2228.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:237 (March 1985), amended LR 11:615 (June 1985), LR 12:501 (August 1986), LR 12:598 (September 1986), LR 13:556 (October 1987), LR 14:220 (April 1988), LR 14:695 (October 1988), LR 15:813 (October 1989), LR 17:30 (January 1991), LR 18:837 (August 1992), LR 22:960 (October 1996), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:

§309. Governing the Sale of Cattle in Louisiana by Livestock Dealers

All cattle which are sold or offered for sale by livestock dealers must meet the general requirements of §115 and the following specific requirements:

A.2.b.ii. ...

3.a. All heifer calves between four and 12 months of age must be vaccinated with USDA approved brucellosis vaccine prior to being sold if they are to remain in Louisiana more than 30 days. The responsibility for the brucellosis calfhood vaccination of those heifer calves sold by a livestock dealer and remaining in Louisiana more than 30 days after the sale shall be placed upon the buyer and the livestock dealer through which said calves are sold. Failure to accomplish this vaccination shall be a violation of this regulation and violators shall be subject to penalties which may be imposed by the Louisiana Livestock Sanitary Board as granted in R.S. 3:2093.

A.3.b. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:562, R.S. 3:2221, and R.S. 3:2228.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:237 (March 1985), amended LR 11:651 (June 1985), LR 12:502 (August 1986), LR 13:558 (October 1987), LR 14:221 (April 1988), LR 17:31 (January 1991), LR 18:838 (August 1992), LR 22:960 (October 1996), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:

Bob Odom
Commissioner

9805#005

DECLARATION OF EMERGENCY

**Department of Economic Development
Racing Commission**

Coupled Entries; Fields (LAC 35:XIII.11113)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., repeals the following emergency rule effective April 22, 1998, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to repeal this rule to eliminate the prohibition of coupled entries and fields in trifecta races.

**Title 35
HORSE RACING
Part XIII. Wagering**

Chapter 111. Trifecta

§11113. Coupled Entries; Fields

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149, R.S. 4:149.1, and R.S. 4:149.2.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 11:616 (June 1985), repealed by the Department of Economic Development, Racing Commission, LR 24:

Paul D. Burgess
Executive Director

9805#013

DECLARATION OF EMERGENCY

**Department of Economic Development
Racing Commission**

Pari-Mutuel Tickets (LAC 35:XV.12341)

The Louisiana State Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule effective April 22, 1998, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana State Racing Commission finds it necessary to amend this rule to provide for conditions of issued

pari-mutuel tickets and refunds thereof. It also corrects the language of the previous version of this rule.

Title 35

HORSE RACING

Part XV. Off-Track Wagering

Chapter 123. General Rules

§12341. Pari-Mutuel Tickets

A. - B. ...

C. When wagers are accepted by a host track, guest track or off-track wagering facility and a pari-mutuel ticket is issued therefor, such wagers are to be considered enforceable contracts, evidenced by possession of winning tickets, and such tickets shall be honored by all cashiers of the host track and the off-track wagering facility where such wagers are placed. Refunds of wagers shall be made only:

1. on a horse that is scratched; or
2. if a race is declared off; or
3. if a manual merge is rendered impossible because of

an act or event beyond the control of a host track and/or the host track's off-track wagering facility including, but not limited to, a catastrophe or acts of God. However, if a licensee, while participating in a common pooled wagering network with one or more other tracks, experiences transmission failure or other malfunctions with either the guest or host totalizator system which prevents the merger or required wagering data, then in such event the licensee shall honor the pari-mutuel ticket.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:176, and R.S. 4:211-227.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 14:290 (May 1988), amended by the Department of Economic Development, Racing Commission, LR 17:261 (March 1991), LR 24:

Paul D. Burgess
Executive Director

9805#012

DECLARATION OF EMERGENCY

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

Home Health Program—Surety Bond

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B), and shall be in effect for the maximum period of 120 days allowed under the Administrative Procedure Act, or until adoption of the rule, whichever occurs first.

Section 4724 of the Balanced Budget Act of 1997 was enacted August 5, 1997 to deal with a variety of issues designed to eliminate waste, fraud, and abuse in the Medicare and Medicaid Programs. One of these provisions established

a requirement that home health agencies provide surety bonds of at least \$50,000 in order to participate in the Medicaid Program. This surety bond is in addition to the similar bond required for participation in the Medicare Program. Section 4724 amends section 1903(i) of the Social Security Act by adding a new paragraph (18). These surety bonds are required to ensure the recovery of overpayments, civil money penalties or assessments.

The Health Care Financing Administration, the federal agency responsible for oversight of the Medicaid Program, will be publishing a final rule with a comment period to implement the statutory requirement of that law. The rule affects the Medicaid regulations at 42 CFR 441 by creating a new section 42 CFR 441.16 and moving the previous 441.16 to 441.17.

These regulations require that all home health agencies (except government-operated agencies that have no uncollected overpayments in the preceding five years) provide a surety bond with an effective date of January 1, 1998. Home health agencies that have not provided an acceptable surety bond will have their Medicaid payments suspended.

Surety bonds must name the Louisiana Department of Health and Hospitals as obligee. For currently enrolled home health agencies, the amount of the bond is the greater of \$50,000 or 15 percent of the amount listed on the IRS Miscellaneous Income Form (1099) for the most recent year. Home health agencies that incurred overpayments in excess of either of these amounts in the previous fiscal year shall provide surety bonds in the amount of the previous year's overpayment.

Purchasers of existing home health agencies are required to obtain a new surety bond effective the date of the change in ownership. The new owner shall purchase a surety bond in the same amount as the one held by the previous owner.

Home health agencies seeking to enroll as Medicaid providers for the first time will be required to provide a surety bond in the amount of \$50,000.

Government-operated agencies that lose their waiver (exempt status) of this requirement must obtain and provide verification of a surety bond in the appropriate amount within 60 days of the date on which they lose exempt status.

The department will accept surety bonds issued by companies authorized by the United States Department of Treasury. A list of these companies can be found at website address www.fms.treas.gov/c570.html.

The home health agencies will be required to submit the original surety bond and a letter signed by an officer of the company stating the following:

- 1) that the bond has been secured;
- 2) the coverage period; and
- 3) the amount of the bond.

The department will mail a letter to each home health agency notifying it of the amount of the surety bond required for their company and steps to be followed.

The surety bond must comply with all applicable federal laws and regulations pertaining to surety bonds and with all applicable state laws and rules pertaining to letters of credit, surety bonds, or combination thereof contained in the Medical Assistance Program Integrity Law, R.S. 46:437.1 et seq., and

applicable rules pertaining thereto.

This action is necessary to comply with the statutory requirement of Section 4724(g) of the Balanced Budget Act of 1997 and avoid possible penalties or sanctions from the federal government. It is anticipated that implementation of this rule is cost neutral.

Emergency Rule

Effective May 20, 1998 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 4724(g) of the Balanced Budget Act of 1997. This provision requires that, as a condition of participation in the Medicaid Program, a surety bond must be obtained by each home health agency listing the Department of Health and Hospitals as the obligee.

A surety bond amount shall be the greater of the following:

- 1) \$50,000;
- 2) 15 percent of Medicaid payments for the most recent calendar year as reflected on the IRS Miscellaneous Income Form (1099); or
- 3) the amount of incurred overpayments in the previous fiscal year.

The home health agency must provide verification of compliance with this requirement. Acceptable verification consists of the original surety bond and a letter signed by an officer of the surety bond company stating that the bond has been secured, the coverage period, and the amount of the bond.

The department will accept surety bonds issued by companies authorized by the United States Department of Treasury. A list of these companies can be found on the Internet website of the Department of Treasury.

Home health agencies that have not provided an acceptable surety bond will have their Medicaid payments suspended.

The surety bond must comply with all applicable federal laws and regulations pertaining to surety bonds and with all applicable state laws and rules pertaining to letters of credit, surety bonds, or combination thereof contained in the Medical Assistance Program Integrity Law, R.S. 46:437.1 et seq., and applicable rules pertaining thereto.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

David W. Hood
Secretary

9805#063

DECLARATION OF EMERGENCY

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

Qualified Individuals—Medicare Part B Buy-In

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the

following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) and shall be in effect for the maximum period allowed under the Administrative Procedure Act, or until adoption of the rule, whichever occurs first.

Section 4732 of the Balanced Budget Act of 1997 requires the Medicaid Program to establish a mechanism for payment of Medicare Part B premiums for two new mandatory eligibility groups of low-income Medicare beneficiaries, called Qualifying Individuals (QIs). This provision amends section 1902(a)(10)(E) of the Social Security Act concerning Medicare cost-sharing for Qualified Medicare Beneficiaries (QMBs) and Specified Low-Income Medicare Beneficiaries (SLMBs). It also amends section 1905(b) of the Act concerning the Federal Medical Assistance Percentage (FMAP), by incorporating reference to and establishing a new section 1933, for Qualifying Individuals (QIs). Qualified Medicare Beneficiaries (QMBs) are individuals entitled to Part A of Medicare, whose income does not exceed 100 percent of the federal poverty level, and whose resources do not exceed twice the Supplemental Security Income (SSI) limit. Specified Low-Income Medicare beneficiaries (SLMBs) are individuals entitled to Part A of Medicare, whose income is above 100 percent, but does not exceed 120 percent of the federal poverty level, and whose resources do not exceed twice the SSI limit. Medicaid eligibility for these groups is limited to payment of Medicare Part B premiums.

Qualifying Individuals are individuals who would be QMBs but for the fact that their income exceeds the income levels established for QMBs and SLMBs. This means that QIs must be entitled to Medicare hospital insurance under Part A and have resources that do not exceed twice the maximum amount established for Supplemental Security Income (SSI) eligibility. Unlike QMBs and SLMBs, who may be determined eligible for Medicaid benefits in addition to their QMB/SLMB benefit, QIs cannot be otherwise eligible for medical assistance under the state plan.

Individuals in the first group of QIs (QI-1s) are eligible if their incomes are above 120 percent of the federal poverty line, but less than 135 percent. The Medicaid benefit for QI-1s consists of payment of the full Medicare Part B premium.

Individuals in the second group of QIs (QI-2s) are eligible if their incomes are at least 135 percent of the federal poverty line, but less than 175 percent. The Medicaid benefit for this group consists only of the portion of the Medicare Part B premium that is attributable to the shift of cost for some home health benefits from Part A to Part B, which raised the Part B premium. Payment for the Medicare premiums described are provided by 100 percent federal funds, which are provided as a capped annual grant. The number of QIs certified is limited by availability of these funds. Effective February 9, 1998, an emergency was adopted, and a notice of intent was published regarding this subject matter (*Louisiana Register*, Volume 24, Numbers 2 and 4). This subsequent emergency rule continues the provisions of the February 9, 1998 emergency rule and the April 20, 1998 notice of intent in force.

This action is necessary to comply with the mandatory

requirement of Section 4732 of the Balanced Budget Act of 1997. It is anticipated that implementation of this emergency rule will be cost neutral.

Emergency Rule

Effective May 20, 1998 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 4732 of the Balanced Budget Act of 1997 governing the payment of Medicare Part B premiums for Qualifying Individuals. These provisions are effective for premiums payable beginning January 1, 1998 and ending with December 31, 2002. A capped allocation is available for each of the five years, beginning January 1998, for payment of premiums for the following two mandatory groups.

1) *Qualified Individuals-1 (QI-1s)*—individuals who are entitled to Part A of Medicare, with income above 120 percent, but less than 135 percent of the federal poverty level. In addition, their resources cannot exceed twice the SSI limit and they cannot otherwise be eligible for Medicaid. Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums. The amount of the capped allocation limits the number of eligible individuals.

2) *Qualified Individuals-2 (QI-2s)*—individuals who are entitled to Part A of Medicare, with income at least 135 percent, but less than 175 percent of the federal poverty level. In addition, their resources cannot exceed twice the SSI limit and they cannot otherwise be eligible for Medicaid. Eligibility for Medicaid benefits is limited to partial payment of Medicare Part B premiums. The amount of the capped allocation limits the number of eligible individuals.

Once an individual is selected to receive assistance in a calendar month, he is entitled to receive assistance for the remainder of the calendar year, as long as the individual continues to meet QI criteria. However, the fact that an individual receives assistance at any time during the year does not necessarily entitle the individual to continued assistance for any succeeding year. For calendar years after 1998, the state shall give preference to individuals who were QIs, QMBs, SLMBs, or Qualified Disabled and Working Individuals (QDWIs) in the last month of the previous year and who continue to be or become QIs. Selection of QIs shall be on a first-come, first-served basis (in the order in which they apply).

David W. Hood
Secretary

9805#065

DECLARATION OF EMERGENCY

Department of Insurance Licensing and Market Compliance Division

Regulation 65—Licensing of Bounty Hunters

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Department of Insurance has adopted an emergency regulation in order that it might be implemented without delay to take effect without causing

imminent peril to the health and safety of the residents of the state of who could be wrongfully surrendered, seriously injured, and/or cause death due to the reckless and wanton conduct of unlicensed agents and bounty hunters in executing bond surrenders for nonpayment of premiums arising out of an insurance contract.

Emergency rulemaking is to establish the guidelines for premium fee administration, transacting a surrender or apprehension of a principal, bond surrender due to nonpayment of premium, prelicensing for applicants and continuing education for licensed agents, criminal bail bonds, fines and hearings, definitions and related matters. This emergency regulation is effective May 20, 1998, and shall remain in effect for the maximum period of time allowed by state law.

Emergency Rule

Section 1. Purpose

The purpose of this regulation is to establish guidelines for premium fee administration, transacting an apprehension or surrender of a principal, bond surrender due to nonpayment of premium, prelicensing for applicants and continuing education for licensed agents or solicitors, bail bonds, fines and hearings, definitions and related matters.

Section 2. Authority

This regulation is issued pursuant to the authority vested in the Commissioner of Insurance under the Administrative Procedure Act and R.S. 22:3, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3 and 22:1191(B).

Section 3. Definitions

The following terms when used in this Chapter shall have the following meanings.

Bail Bond Agent—a person, corporation, or partnership which holds an insurance agent or solicitor license and is authorized to provide surety in Louisiana, and/or engages in the apprehension and return of persons who are released on bail or failed to appear at any state of the proceedings to answer the charge before the court in which they may be prosecuted. For purposes of this regulation a bail recovery agent is synonymous with a bail bond agent.

Bail Enforcement—the apprehension or surrender of a principal by a natural person, who is released on bail or who has failed to appear at any state of the proceedings to answer the charge before the court in which he may be prosecuted.

Bail Solicitor—an individual who holds an insurance license and is authorized by a duly licensed bail bond agent to solicit contracts of bail bond insurance and engages in bail enforcement, solely on behalf of the licensed bail bond agent.

Commissioner—the Louisiana Commissioner of Insurance.

Department—the Louisiana Department of Insurance.

Insurer—any domestic or foreign insurance corporation or association engaged in the business of insurance or suretyship which has qualified to transact surety or casualty business in this state.

Surrender—as defined by Article 345 of the *Code of Criminal Procedure*.

Section 4. Bail Recovery Agent License Requirements

A. In order to engage, to transact, or assist in the apprehension or surrender of a principal, a person must be a

duly licensed bail bond agent or solicitor, pursuant to Part XXIV and Part XXV-A of the *Louisiana Insurance Code*.

1. Continuing Education Program

a. Persons holding a valid bail bond agent or solicitor license must complete 16 hours of a continuing education program, approved by the department, every two years, four hours of which must be instruction in bail enforcement.

b. On or before January 1 of every odd numbered year, all duly licensed bail bond agents shall have completed 16 hours of continuing education described in this Section.

c. On and after May 1, 2000, no person shall engage in the bail bond insurance business, including enforcement and bail recovery activities, unless such person is duly licensed bail bond agent or solicitor pursuant to Part XXIV and Part XXV - A of the *Louisiana Insurance Code*.

2. Prelicensing. On and after May 1, 1999, all persons applying for a bail bond agent or solicitor license must complete 16 hours of supervised instruction, approved by the department, eight hours of which, must be instruction in bail enforcement.

B. Bail recovery agents from other states must be duly authorized to transact bail enforcement or be a licensed bail bond agent in the state where the bond was written and must contract with a duly licensed bail bond agent from the state of Louisiana in order to transact any surrender or apprehension of a principal in the state of Louisiana. Bail recovery agents from other states must have in their possession certified copies of material needed to identify the principal. Said materials shall be:

1. judgment of bond forfeiture or court order of failure to appear and/or certified copy of bond and/or agent's duly executed copy of the contract;
2. photograph of individual; and
3. documentation reflecting that person is duly authorized to transact bail enforcement by the state where the bond was written.

Section 5. Enforcement

A. The commissioner is vested with the authority to enforce this regulation. The department may conduct investigations or request other state, parish or local officials to conduct investigations and promulgate such rules and regulations as may be deemed necessary for the enforcement of this regulation. The department shall impose penalties, sanctions or fines as delineated in the *Louisiana Insurance Code* and collect such fines as necessary for the enforcement of such rules and regulations.

B. At all times while performing bail enforcement, bail bond agents or solicitors shall wear clothing that identifies their bail bonding company or clothing that identifies their bail bonding agency or clothing that identifies them as a bail recovery agent. Bail bond agents or solicitors involved in a bail recovery shall not wear clothing that suggests that they are police officers or government agents. The identity of the bail bonding company, bail bond agent or solicitor agent must be written out in full on both sides of the clothing. The size of the lettering must not be less than ½-inch on the front of the clothing and must be no less than 2 inches on the rear of clothing. All lettering on the front must be uniform in size and

all lettering on the rear must be uniform in size. The bail bond agent or solicitor on site during a bail enforcement shall have on his person the license issued from the commissioner of insurance. If any law enforcement authority is contacted or if a complaint is filed with the district attorney's office as a result of any activity which occurs during bail enforcement, the district attorney or the law enforcement authority may deliver to the commissioner a copy of any reports or complaints which allege violations of this regulation.

C. A principal may not be placed into a jail on a bond surrendered for nonpayment of a premium. The agent or solicitor must serve the principal and an officer at the jail where the principal is incarcerated with a letter stating the principal has a right to have a hearing with the commissioner if the principal alleges his rights under this Part have been violated. The letter must be served at the time of the surrender on both the principal and the officer who accepts the principal into custody. The commissioner shall decide if any fines shall be due under this regulation. No handcuffs or lethal weapons shall be used in circumstances where the bail recovery agent decides to surrender a principal in cases where there is no bond forfeiture or the principal has not fled the jurisdiction of the court.

D. In order to transact a surrender or apprehension of a principal, the following shall be done.

1. The bail bond agent or solicitor, before conducting a surrender or apprehension of a principal shall notify the local law enforcement in the parish or city where the principal is sought.

2. The bail bond agent or solicitor is required to provide the sheriff or local police of that area with a copy of all documentation that identifies the principal to be surrendered or apprehended. Such documentation shall be:

- a. certified copy of judgment of bond forfeiture;
- b. certified copy of bond and/or agent's duly executed copy of the application; and
- c. photograph of person to be surrendered.

E. Violations of this Section are governed by Part XXIV (Qualification and License Requirements for Insurance Agents, Brokers, Surplus Lines Brokers and Solicitors) and XXVI (Unfair Trade Practices) of the *Louisiana Insurance Code*, the commissioner shall impose penalties, sanctions, or fines as delineated in Part XXIV and XXVI of the *Louisiana Insurance Code* and may seek injunctive relief against all licensed persons who violate the provisions contained herein.

Section 6. Suspension or Revocation; Licenses; Fines; Prohibited Acts

A. No licensed bail agent or solicitor shall improperly withhold, misappropriate, fail to timely remit premiums and reports of bonds written, or convert to one's own use any monies belonging to principals, sureties and underwriters, or others possessed in the course of the business of insurance.

B. No licensed bail agent or solicitor shall perform bail enforcement in pursuit of any principal release on bail for nonpayment of premium.

C. No licensed bail agent or solicitor shall fail to return the premiums when a bond is revoked for the nonpayment of premium.

D. No licensed bail agent or solicitor shall remove or have removed any bail bond power of attorney from the clerk of court or sheriff.

E. No licensed bail agent or solicitor shall transact or engage in the surrender or apprehension of a principal with the assistance of an unlicensed person.

F. Violations of this Section are governed by Part XXIV (Qualification and License Requirements for Insurance Agents, Brokers Surplus Lines Brokers and Solicitors) and XXVI (Unfair Trade Practices) of the *Louisiana Insurance Code*. The commissioner shall impose penalties, sanctions or fines as delineated in Part XXIV and XXVI of the *Louisiana Insurance Code* and may seek injunctive relief against all unlicensed persons who violate the provisions contained herein.

James H. "Jim" Brown
Commissioner of Insurance

9805#041

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Family Independence Temporary Assistance
Program—Food Stamp Disqualifications
(LAC 67:III.1118 and 1988)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following rule effective May 7, 1998 in the Family Independence Temporary Assistance and Food Stamp Programs. This rule shall remain in effect for a period of 120 days.

Pursuant to Public Law 105-33, the Balanced Budget Act of 1997, a change in the eligibility of a recipient convicted of a drug-related felony offense is required, since the governing date of the federal statute now applies to the date of the offense rather than the date of conviction. The agency received clarification of the change in April 1998. Therefore, this emergency rule is necessary in order to avoid federal sanctions or penalties which could be imposed by further delaying implementation.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 11. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1118. Individuals Convicted Of A Felony Involving A Controlled Substance

An individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the

possession, use, or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act, 21 U.S.C.802[6]) shall be disqualified from receiving cash assistance for a period of one year commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall apply to an offense which occurred after August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:233.1. and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:449 (April 1997), amended LR 23:1708 (December 1997), LR 24:

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter J. Determining Household Eligibility and Benefit Levels

§1988. Eligibility Disqualification of Certain Recipients

* * *

B. An individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance (as defined in Section 102(6) of the Controlled Substances Act, 21 U.S.C. 802[6]) shall be disqualified from receiving food stamp benefits for a period of one year commencing on the date of conviction if an individual is not incarcerated, or from the date of release from incarceration if the individual is incarcerated. This shall apply to an offense which occurred after August 22, 1996.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:233.1, P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 23:590 (May 1997), LR 23:1710 (December 1997), LR 24:

Madlyn B. Bagneris
Secretary

9805#045

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Red Snapper Season Closure

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in its resolution of January 8, 1998 setting the 1998 commercial red snapper seasons, to declare a closed season when he is informed that two-thirds of the commercial red snapper quota for the Gulf of Mexico has been harvested or projected to be

harvested, such closure order shall close the season until 12 noon September 1, 1998, which is the date set for the re-opening of the 1998 commercial red snapper season in Federal waters, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 12:01 a.m., April 19, 1998, the commercial fishery for red snapper in Louisiana waters will close and remain closed until 12 noon September 1, 1998. Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing red snapper taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.4.

The secretary has been notified by the National Marine Fisheries Service that two-thirds of the commercial red snapper quota has been harvested, and the season closure is necessary to prevent over fishing of this species.

James H. Jenkins, Jr.
Secretary

9805#002

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Reef Fish—Daily Take, Possession and Size Limits Set by Commission (LAC 76:VII.335)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and pursuant to its authority under R.S. 56:6(25)(a), R.S. 56:326.1 and R.S. 56:326.3 adopts the rule set forth below. This emergency rule is necessary to expedite the enforceability and effectiveness of Federal regulations on the recreational fishery for red snapper, which became effective April 29, 1998. It is therefore in the best interest of the State, and appropriate that these regulations be enacted expeditiously, thereby requiring emergency action. This Declaration of Emergency shall become effective at 12:01 a.m., May 11, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§335. Reef Fish—Daily Take, Possession and Size Limits Set by Commission

A. The Louisiana Wildlife and Fisheries Commission does hereby adopt the following rules and regulations regarding the harvest of snapper, grouper, sea basses, jewfish, and amberjack within and without Louisiana's territorial waters:

Species

1. Red Snapper

Recreational Bag Limits

4 fish per person per day

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:

Thomas M. Gattle, Jr.
Chairman

9805#066

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Spring Inshore Shrimp Season—1998

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons; R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters; and R.S. 56:497(A)(2), which provides that the season in Zone 2 shall open no later than the third Monday in May in 1998, the Wildlife and Fisheries Commission does hereby set the 1998 Spring Inshore Shrimp Season to open as follows:

Zone 1—that portion of Louisiana's inshore waters from the Mississippi State line to the eastern shore of South Pass of the Mississippi River, to open at 6 a.m., May 25, 1998, except the open waters of Breton and Chandeleur Sounds as described in the menhaden rule (LAC 76:VII.307.D) which shall open at 6 a.m., May 18, 1998; and

Zone 2—that portion of Louisiana's inshore waters from the eastern shore of South Pass of the Mississippi River westward to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, as well as that portion of the State's Territorial Waters south of the Inside/Outside Shrimp Line as described in R.S. 56:495 from the Atchafalaya River Channel at Eugene Island as delineated by the River Channel buoy line to Freshwater Bayou, all to open at 6 a.m., May 18, 1998; and

Zone 3—that portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Texas State Line, to open at 6 a.m., May 25, 1998.

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

Thomas M. Gattle, Jr.
Chairman

9805#064