

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Board of Architectural Examiners

Certificates (LAC 46:I.905)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners gives notice that rule making procedures have been initiated for the amendment and repromulgation of LAC 46:I.905 pertaining to the certificates which the board issues to architects. The only proposed change pertains to §905.E. The board proposes to amend §905.E to allow registrants retired from active practice who have either practiced architecture for thirty (30) years or more or who are 65 years of age or older to request emeritus status. Presently, only registrants retired from active practice who are 65 years of age or older may request such a status.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part I. Architects

Chapter 9. Registration Procedure

§905. Certificates

A. Upon granting registration and issuance of a license to practice architecture, a copy of the licensing law and the rules of the board shall be forwarded to the registrant.

B. Only individuals, professional architectural corporations, architectural-engineering corporations, and limited liability companies who have met the statutory registration requirements through established board rules shall receive certificates of registration.

C. Each holder of a certificate shall maintain the certificate in his principal office or place of business in this state.

D. A replacement certificate will be issued to a registrant to replace one lost or destroyed, provided the current annual registration renewal is in effect, the registrant makes proper request and submits an acceptable explanation of the loss or destruction of the original certificate, and the registrant pays a fee to be set by the board.

E. Registrants retired from active practice who have either practiced architecture for thirty (30) years or more or who are 65 years of age or older may request emeritus status. The annual renewal fee for approved emeritus registrants will be \$5. Revocation and reinstatement rules will otherwise apply to emeritus registrants, just as they do to all other registrants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:144.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, LR 4:334 (September 1978) and LR 10:738 (October 1984), amended by Department of Economic Development, Board of Architectural Examiners, LR 15:6 (January 1989), LR 20:995 (September 1994), LR 24:

Interested persons may submit written comments on this proposed rule to Ms. Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 8017 Jefferson Highway, Suite B2, Baton Rouge, Louisiana 70809.

Mary "Teeny" Simmons
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Certificates

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs (savings) to state or local governmental units associated with this proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule change may have some minimal effect on revenue collections of the Louisiana State Board of Architectural Examiners, since some registrants retired from active practice who have practiced architecture for 30 or more years may request emeritus status.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule change may have some economic benefit to registrants retired from active practice who have practiced architecture for 30 years or more since some of those persons might request emeritus status.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment associated with this proposed rule.

Mary "Teeny" Simmons
Executive Director
9806#072

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Economic Development Board of Architectural Examiners

Seal/Stamp—Use; Prohibition; and Documentation
(LAC 46:I.1115)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:950 et seq., the Board of Architectural Examiners gives notice that rule making procedures have been initiated for the amendment of LAC 46:I.1115 pertaining to the board's interpretation of R.S. 37:152(B). R.S. 37:152(B) prohibits an architect from affixing his or her seal or stamp or permitting it to be affixed to any specification, drawing, or other related document

which was not prepared either by him or her or under his or her responsible supervision, and §1115 requires the architect to maintain written documentation of the architect's preparation or responsible supervision. The board proposes to clarify that this written documentation should be maintained for whatever prescriptive period may be applicable to claims against the architect which may arise from his or her involvement in the project. Further, the board proposes to clarify that this statute does not prohibit the use of prototypical documents in limited situations where certain requirements have been satisfied.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part I. Architects

Chapter 11. Administration

§1115. Interpretation of R.S. 37:152(B)

A.1. Specifications, drawings, or other related documents will be deemed to have been prepared either by the architect or under the architect's responsible supervision only when:

a. the client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the architect, or the architect's employee as long as the employee works in the architect's office;

b. the architect personally controls the preparation of the plans, specifications, drawings, reports or other documents and has input into their preparation prior to their completion;

c. if the plans, specifications, drawings, reports, or other such documents are prepared outside the architect's office, the architect shall maintain evidence of the architect's responsible control including correspondence, time records, check prints, telephone logs, site visit logs, research done for the project, calculations, changes, and written agreements with any persons preparing the documents outside of the architect's offices accepting professional responsibility for such work;

d. the architect reviews the final plans, specifications, drawings, reports or other documents; and

e. the architect has the authority to, and does, make necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents.

2. If an architect fails to maintain written documentation of the items set forth above, when such are applicable, then the architect shall be considered to be in violation of R.S. 37:152, and the architect shall be subject to the disciplinary penalties provided in R.S. 37:153. This written documentation should be maintained for the prescriptive period applicable to claims against the architect which may arise from his or her involvement in the project.

B.1. Nothing precludes the use of prototypical documents provided the architect:

a. has written permission to revise and adapt the prototypical documents from the person who either sealed the prototypical documents or is the legal owner of the prototypical documents;

b. reviewed the prototypical documents and made necessary revisions to bring the design documents into

compliance with applicable codes, regulations, and job specific requirements;

c. independently performed and maintains on file necessary calculations;

d. after reviewing, analyzing and making revisions and/or additions, issued the documents with his/her title block and seal (by applying his/her seal the architect assumes professional responsibility as the architect of record); and

e. maintained design control over the use of site adapted documents just as if they were his/her original design.

2. The term "prototypical documents" shall mean model documents of buildings that are intended to be built in several locations with substantially few changes and/or additions except those required to adapt the documents to each particular site; that are generic in nature; that are not designed or premised upon the laws, rules or regulations of any particular state, parish, or municipal building code; that do not account for localized weather, topography, soil, subsistence, local building codes, or other such conditions or requirements; and that are not intended to be used as the actual documents to be employed in the construction of a building but rather as a sample or a model to provide instruction or guidance. The term "legal owner" shall mean the person who provides the architect with a letter that he or she is the owner of the documents and has the written permission to allow the use thereof.

AUTHORITY NOTE: Promulgated and amended in accordance with R.S. 37:144.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Architectural Examiners, LR 17:575 (June 1991), amended LR 24:18 (January 1998), LR 24:

Interested persons may submit written comments on this proposed rule to Ms. Mary "Teeny" Simmons, Executive director, Board of Architectural Examiners, 8017 Jefferson Highway, Suite B2, Baton Rouge, Louisiana 70809.

Mary "Teeny" Simmons
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Seal/Stamp—Use; Prohibition; and Documentation

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated implementation costs (savings) to state or local governmental units associated with this proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units associated with this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment associated with this proposed rule.

Mary "Teeny Simmons
Executive Director
9806#071

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Economic Development
Racing Commission**

Entries (LAC 35:V.6301)

The Racing Commission hereby gives notice that it intends to amend LAC 35:V.6301 "Procedure" because of the need to stipulate the requirement that jockey agents shall only be permitted to enter only those horses which their respective jockeys are scheduled to ride.

Title 35

HORSE RACING

Part V. Racing Procedures

Chapter 63. Entries

§6301. Procedure

Entries and declarations shall be made in writing and signed by the owner or trainer of the horse, or his authorized agent or his subagent. Jockey agents may make entries for owners or trainers after presenting the stewards with written permission from the owners or trainers. However, jockey agents shall only be permitted to enter only those horses which their respective jockeys are scheduled to ride.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:436 (December 1976), LR 3:32 (January 1977), LR 4:279 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 24:

The domicile office of the Racing Commission is open from 8 a.m. to 4 p.m. and interested parties may contact Paul D. Burgess, executive director; C.A. Rieger, assistant director; or Tom Trenchard, administrative manager, at (504) 483-4000 (FAX 483-4898), holidays and weekends excluded, for more information.

All interested persons may submit written comments relative to this proposed rule through June 6, 1998, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Paul D. Burgess
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Entries

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no costs to implement this action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action benefits horsemen by requiring jockey agents to enter horses only with their own assigned riders.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action has no effect on competition nor employment.

Paul D. Burgess
Executive Director
9806#013

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Economic Development
Used Motor Vehicle and Parts Commission**

Meetings and Licensure
(LAC 46:V.2701, 2703, 2901, 2905 and 3303)
(Repeal of §2801)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes, Title 32, Chapters 4A and 4B, the Department of Economic Development, Used Motor Vehicle and Parts Commission, notice is hereby given that the Used Motor Vehicle and Parts Commission intends to amend sections of existing rules and regulations and repeal §2801.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

PART V. Automotive Industry

Subpart 2. Used Motor Vehicle and Parts Commission

**Chapter 27. The Used Motor Vehicle and Parts
Commission**

§2701. Meetings of the Commission

A. The Commission shall meet at its office in Baton Rouge, LA on the second Tuesday in each month to transact such business as may properly come before it. The regular meeting will convene at the hour of 1 P.M. and shall continue at the pleasure of those present. Any change of monthly meetings will be in accordance with the Open Meeting Law R.S. 42:5.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772E.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 15:1058 (December 1989), LR 18:1116 (October 1992), LR 24:

§2703. Quorum of the Commission

Seven members of the commission shall constitute a quorum for the transaction of official business. Fewer than a quorum may adjourn the meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772E.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 24:

§2801. Identification Cards

Repealed.

§2901. Dealers to be Licensed

A. ...

B. Dealers in new and used motor homes, new and used semitrailers, new and used motorcycles, new and used all-terrain vehicles, new and used recreational trailers, new and used boat trailers, new and used travel trailers, new and used buses, new and used fire trucks, new and used wreckers, new and used boats, new and used boat motors, daily rentals not of the current year or immediate prior year models that have been titled previously to an ultimate purchaser, manufacturers and distributors and other types subject to Certificate of Title Law and Title 32 and/or Vehicle Registration Tax under Title 47. All new and unused vehicle dealers and other dealers licensed by the Louisiana Motor Vehicle Commission are excluded from licensing by the Louisiana Used Motor Vehicle and Parts Commission.

C. ...

D. Automotive dismantlers and parts recyclers, motor vehicle crushers, motor vehicle scrap dealers, motor vehicle shredders.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773 A.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 24:

§2905. Qualifications and Eligibility for Licensure

A. - D. ...

E. Dealers in new and used motor homes, new and used boats, new and new boat motors, new and used motorcycles, new and used all-terrain vehicles, new and used semi-trailers, new and used recreational trailers, new and used boat trailers, new and used travel trailers, new and used buses, new and used fire trucks, new and used wreckers likewise must meet the above qualifications to be eligible and all these types license numbers will be prefixed by NM, followed by a four digit number then the current year of license (NM-0000-98). Semitrailers are described in the title law as every single vehicle without motive power designed for carrying property and passengers and so designed in conjunction and used with a motor vehicle that some part of its own weight and that of its own load rests or is carried by another vehicle and having one or more load carrying axles. This includes, of course, recreational trailers, boat trailers and travel trailers, but excludes mobile homes. One license shall be due for new and used operators at the same location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062

(November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 24:

§3303. Qualifications and Eligibility for Licensure

A. - C. ...

D. An automotive dismantler and parts recycler may offer a rebuilt wrecked, abandoned or repairable motor vehicle at wholesale only. If such vehicle is offered for sale at retail, the dismantler will be operating as a used motor vehicle dealer and is subject to licensing requirements and used motor vehicle dealer rules and regulations thereof. However, an automotive dismantler and parts recycler, duly licensed by the commission, shall have the authority to transfer the certificate of title as a dealer under the Louisiana Certificate of Title Law, (i.e., transfer to another dealer without payment of tax). In order to sell a vehicle at retail, an automotive dismantler and parts recycler must be licensed hereunder as a used motor vehicle dealer providing a good and sufficient bond, executed by the applicant as principal by a surety company qualified to do business as surety in the sum of \$10,000.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772 F.(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 24:

Interested persons may submit written comments no later than 30 days from the date of publication of the notice of intent to John M. Torrance, Executive Director, 3132 Valley Creek Drive, Baton Rouge, LA 70808, (504) 925-3870.

John M. Torrance
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Meetings and Licensure

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
A total of \$6,188.00 for FY 97-98 will be saved by the repeal of the issuance of Identification Cards. This total includes the printing of 11,502 Identification Card forms and 250 envelopes (\$5,127.00) and the cost of postage for the mailing of 250 envelopes (\$1,061.00). In addition, the office workload will be decreased since it takes approximately eleven days to complete this project. Approximate savings of \$6,435.52 for FY 98-99 and \$6,692.94 for FY 99-2000 will be realized by the commission through the repeal of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Neither state nor local revenues will be affected as a result of the rules proposed for repeal and amendment.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No impact on receipts of income will result from the proposed rule changes. Licensees will no longer be required to carry Identification Cards issued by this Agency when conducting business at a used motor vehicle auto auction.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not impact competition and employment in the public or private sector.

John M. Torrance
Executive Director
9806#041

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Science Graduation Requirements

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, a proposed revision to Bulletin 741—Louisiana Handbook for School Administrators. Bulletin 741 is referenced in the Louisiana Administrative Code 28:I.901.A. The requirement will become effective for incoming freshmen 1999-2000 and will require students to have at least one Carnegie Unit of credit in the Physical Science domain. The policy change does not change the number of required units. The number of required units will remain at three. The amendment to the High School Program of Studies will include:

1. the required Biology will now be Biology I;
2. the course title General Science will be replaced with Integrated Science; and
3. the course title Vocational Agriculture will be replaced with Agriscience.

The policy change will align the science graduation requirements with the new state science standards and state assessment. Changes to Bulletin 741 under Minimum Requirements for High School Graduation are as follows:

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§901. School Approval Standards and Regulations**

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3761-3764.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education LR 24:

Bulletin 741: School Approval Standards and Regulations

* * *

High School Program of Studies

* * *

Science 3 units

(Effective for Incoming Freshmen 1999-2000 and thereafter)
Shall be:

- 1 unit of Biology I;
- 1 unit of Physical Science (Physical Science or Integrated Science (not both); Chemistry I, Physics I, or Physics for Technology I)¹

1 unit from Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics for Technology II, Agriscience I², Agriscience II², or any other course not already taken from the Physical Sciences cluster.³

¹ If a student takes Physical Science or Integrated Science, s/he may then take Chemistry I, Physics I, or Physics of Technology I as an elective. If a student takes Chemistry I, Physics I, or Physics for Technology I to fulfill the Physical Science requirement, s/he may not then take Physical Science or Integrated Science as an elective.

² Both Agriscience I and II must be completed for one unit of science credit.

³ Additional local electives that have been approved for science credit by the SDE may be offered. All advanced placement science courses will be accepted for credit.

Science

2.105.20 Three units of science shall be required for graduation. They shall be:

- 1 unit of Biology I;
- 1 unit of Physical Science or Integrated Science (but not both), Chemistry I, Physics I, or Physics for Technology I; and
- 1 unit of Aerospace Science, Biology II, Chemistry I (may be taken after Physical Science or Integrated Science), Chemistry II, Earth Science, Environmental Science, Physics I (may be taken after Physical Science or Integrated Science), Physics II, Physics for Technology I, Physics for Technology II, or both Agriscience I and II to meet one required unit of science.

Course Title	Unit(s)
Aerospace Science	1.0
Agriscience I and II	1.0 (both courses are required for one unit)
Biology I, II	1.0 each
Chemistry I, II	1.0 each
Earth Science	1.0
Environmental Science	1.0
Integrated Science	1.0
Physical Science	1.0
Physics I, II	1.0 each
Physics for Technology I, II	1.0 each

* * *

Interested persons may submit written comments until 4:30 p.m., July 10, 1998 to Jeannie Stokes, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Science Graduation Requirements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated cost to state or local governmental units is \$100.00 to update and disseminate the changes to Bulletin 741.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affect persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9806#047

Richard W. England
Assistant to the
Legislative Fiscal Officer

Bayou Des Cannes, 050201; Bayou Nezpique—headwaters to Mermentau River, 050301; Mermentau River—origin to Lake Arthur, 050401; Bayou Queue de Tortue—headwaters to Mermentau River, 050501; and Lacassine Bayou—headwaters to Grand Lake, 050601. A UAA has determined that naturally dystrophic waters critical periods for dissolved oxygen (DO) occur in the months of March through November in these six Mermentau River water body segments. However, while these waters bodies may experience naturally occurring seasonal variations in DO, no changes in designated uses are being proposed. The recommended DO criteria are:

December through February	5.0 mg/L; and
March through November	3.0 mg/L.

The UAA presents the required information for a site specific water quality standard revision to the DO standard in accordance with state and federal water quality regulations, policies, and guidance.

The basis and rationale for this proposed rule are to comply with the CWA and achieve the national goal of attaining water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and provides for recreation in and on the water. Analyses of use attainability are conducted by the department to determine the uses and criteria an individual water body can attain. The UAA process entails the methodical collection of data which is then scientifically analyzed and summarized and used to establish site-specific uses and criteria.

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

NOTICE OF INTENT

**Department of Environmental Quality
Office of Water Resources
Water Quality Management Division**

Mermentau River Basin Use Attainability
Analysis (LAC 33:IX.1123)(WP029)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.1123.C.3 (Log Number WP029).

As part of the Louisiana Water Quality Management Plan the state publishes a list of priority water bodies biennially under Clean Water Act (CWA) section 305(b). In accordance with CWA section 303(d), water bodies are placed on the list of priority water bodies because assessment methodology indicates they do not meet applicable water quality standards. After further review and assessment, some of these water bodies may be prioritized for field work, Use Attainability Analyses (UAAs), and if appropriate, water body modeling for Total Maximum Daily Loads (TMDLs). However, until a UAA is conducted to determine the "attainable" uses and criteria, a TMDL based upon national criteria may be inappropriate for many water bodies. Water bodies which have been classified as the highest priority on Louisiana's 1998 303(d) list include six streams in the Mermentau River Basin:

Bayou Des Cannes—headwaters to Mermentau River, 050101; Bayou Plaquemine Brule—headwaters to

**TITLE 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality Regulations
Chapter 11. Surface Water Quality Standards
§1123. Numerical Criteria and Designated Uses**

[See Prior Text in A - C.2]

3. Designated Uses. The following are the category definitions of Designated Uses that are used in Table 3 under the subheading "DESIGNATED USES."

- A—Primary Contact Recreation
- B—Secondary Contact Recreation
- C—Propagation of Fish and Wildlife
- L—Limited Aquatic Life and Wildlife Use
- D—Drinking Water Supply
- E—Oyster Propagation
- F—Agriculture
- G—Outstanding Natural Resource Waters

Numbers in brackets (e.g. [1])—refer to endnotes listed at the end of the table.

Table 3. Numerical Criteria and Designated Uses									
Code	Stream Description	Designated Uses	Criteria						
			CL	SO ₄	DO	pH	BAC	°C	TDS
	ATCHAFALAYA RIVER BASIN (01)								

*** [See Prior Text in 010101 - 042209]									
MERMENEAU RIVER BASIN (05)									
050101	Bayou Des Cannes - Headwaters to Mermentau River	A B C F	90	30	[16]	6.0-8.5	1	32	260
*** [See Prior Text in 050102 - 050103]									
050201	Bayou Plaquemine Brule - Headwaters to Bayou Des Cannes	A B C F	90	30	[16]	6.0-8.5	1	32	260
050301	Bayou Nezpique - Headwaters to Mermentau River	A B C F	90	30	[16]	6.0-8.5	1	32	260
*** [See Prior Text in 050302 - 050304]									
050401	Mermentau River - Origin to Lake Arthur	A B C F	90	30	[16]	6.0-8.5	1	32	260
*** [See Prior Text in 050402]									
050501	Bayou Queue de Tortue - Headwaters to Mermentau River	A B C F	90	30	[16]	6.0-8.5	1	32	260
050601	Lacassine Bayou - Headwaters to Grand Lake	A B C F	90	30	[16]	6.0-8.5	1	32	400
*** [See Prior Text in 050602 - 120806]									

ENDNOTES:

[See Prior Text in [1] through [15]]

[16] Designated Naturally Dystrophic Waters Segment; Seasonal DO Criteria: 5 mg/L December - February, 3 mg/L March - November.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 15:738 (September 1989), amended LR 17:264 (March 1991), LR 20:431 (April 1994), LR 20:883 (August 1994), LR 21:683 (July 1995), LR 22:1123 (November 1996), LR:

A public hearing will be held on July 27, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810.

Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by WP029. Such comments must be received no later than August 3, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation

Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP029.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Linda Korn Levy
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Mermentau River Basin Use
Attainability Analysis**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant effect of this proposed rule on state or local governmental expenditures is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant effect on state or local governmental revenue collections is anticipated.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant costs and/or economic benefits to directly affected persons or nongovernmental groups are anticipated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition and employment is anticipated.

Linda Korn Levy
Assistant Secretary
9806#027

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Firefighters' Pension and Relief Fund
City of New Orleans and Vicinity**

Election Nominations and Committee; Ballot Procedure;
Board Member Installation; Inquiries and Special Elections
(LAC 58:V.1701-1711)

The Board of Trustees of the Firefighters's Pension and Relief Fund for the City of New Orleans and Vicinity ("Fund"), pursuant to R.S. 11:3363(F), proposes to adopt rules of regulations regarding the conduct of nominations and election of Trustees to the Board of the Fund from the ranks of eligible active and retired members of the New Orleans Fire Department. These rules seek to regulate the election process conducted pursuant to R.S. 11:3362(A) and (B), by providing safeguards for the secrecy of the ballot and integrity of the system of ballot tabulation.

Title 58

RETIREMENT

**Part V. Firefighters' Pension and Relief Fund for the
City of New Orleans and Vicinity**

Chapter 17. Election Rules

§1701. Nominations

A. Election for positions on the Board of Trustees as described in R.S. 11:3362(A)(2) and (3) will be held in the second week of December every two years on odd numbered years. Elected members will be seated on the second Wednesday in January of the following year.

B. Notices for nomination will be carried in monthly Fund minutes, beginning in August of any election year.

C. Nominations for vacant positions will be accepted from eligible members in writing during the second week in November (Monday-Friday, 9 a.m.-4 p.m.) in the Fund office. The Fund office will forthwith notify all nominees of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3362 and 3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 24:

§1703. Election Committee

All members nominated for the Board will automatically become members of the election committee for the election in which they have been nominated. The committee will serve

until the next election is held. On the Wednesday following the close of nominations, the election committee will meet to review all the rules of the election. The committee can discuss procedures but will not have the authority to change any rules for any election. Any committee member may offer recommendations or rule changes for any subsequent election, which shall be recorded in the minutes of the committee or a special report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3362 and 3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 24:

§1705. Ballot Procedure

A. Ballots with security envelopes and return envelopes will be mailed out on the fourth Monday in November, subject to the following controls.

1. Outgoing postage receipt of total mailing will be kept at the pension office.

2. The listing of all members mailed ballots will be kept at the pension office. Any member may inspect, but not copy, the voter mailing list.

3. The election committee will make available to members with the number of names added to the list after the initial mailing and the number of duplicate ballots mailed to members who did not receive the original ballot.

4. The election committee will account for all ballots (used and unused).

B. All ballots must be returned, signed, no later than 4 p.m. on the second Wednesday in December, subject to the following controls.

1. Ballots will be verified for eligibility by pension office staff daily.

2. The election committee will have authority to check for eligibility prior to counting of ballots.

3. A current account of envelopes returned will be preserved.

4. Ballots will be placed in two secured ballot boxes at the pension office. Separate boxes will be maintained for active and retired members.

5. Each ballot box will be secured with two different locks. The election committee will designate two incumbent members and two non-incumbent member nominees to control the keys to all four locks.

C. The following voting instructions and procedures shall apply.

1. Each member will receive an official ballot with voting instructions.

2. A blank security envelope and a self-addressed stamped envelope addressed to:

Firefighters' Pension and Relief Fund
329 South Dorgenois Street
New Orleans, LA 70119

3. Members must vote for only the specified number of candidates in the appropriate sections. Members may vote for less than the specified number, however, voting in excess of the specified number, in the appropriate section, will spoil the ballot for that section.

4. Members should place their ballot in the security envelope, then seal the envelope. The security envelope should

then be placed inside the self-addressed, stamped envelope.

5. Members must sign the self-addressed envelope in the upper left corner in the space provided. A member's signature shall serve as proof of eligibility. Any envelopes not signed will be rejected.

6. All ballots must be returned signed, to the fund office, no later than 4 p.m. on the second Wednesday in December.

D. All ballots will be counted at the Fund Office at 9 a.m. on the Thursday following the deadline for ballots to be returned, subject to the following conditions.

1. The election committee shall report to the pension office no later than 8:30 a.m.

2. The election committee is to oversee the counting of ballots.

3. The election committee is responsible for accuracy of votes counted.

E. Envelopes and ballots will be maintained and preserved at the pension office for three months following any election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3362 and 3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 24:

§1707. Installation of Elected Members

Newly elected board members will be seated at the meeting held on the second Wednesday in January of the following year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3362 and 3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 24:

§1709. Election Inquiries

A. Any questions from members regarding the election should be directed to the election committee, in writing, addressed care of the Fund Secretary-Treasurer.

B. The election committee may propose comments, suggestions and recommendations on any changes for the next election to be held following the election under its supervision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3362 and 3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 24:

§1711. Special Elections

Special elections must be called within 30 days of any vacancy on the board, caused by death, resignation or otherwise. The foregoing rules for regular elections shall apply to all special elections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3362 and 3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 24:

Interested persons may submit questions or written comments to: Richard J. Hampton, Jr, Secretary-Treasurer of

the Board of Trustees, 329 Dorgenois Street, New Orleans, LA, before 5 p.m., July 18, 1998.

Richard Hampton
Secretary-Treasurer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Election Nominations and Committee; Ballot Procedure; Board Member Installation; Inquiries and Special Elections

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule change will have no impact on State or local governmental costs. The rule change will merely establish firm procedures for the collection and tabulation of voter's ballots. These procedures will not affect the costs associated with nominating and electing Trustees to the Fund.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of State or local governmental units posed by adoption of the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons by adoption of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment by the proposed rule's adoption.

Louis L. Robein
Designee/Fund Attorney
9806#073

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Office of the Governor Office of Elderly Affairs

Adult Protective Services for
the Elderly (LAC 4:VII.1239)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend §1239, "Adult Protective Services for the Elderly," effective September 20, 1998. The purpose of this rule change is to improve the efficiency of program operations and clarify existing policy. The proposed rule change will (1) identify Elderly protective Services as the agency statutorily authorized to protect the elderly as opposed to Adult Protective Services; (2) update definitions to conform to current statutory language in related legislation; and (3) create a policy for Complaints against Elderly Protective Services. This rule complies with LA R.S. 14:403.2.

Title 4
ADMINISTRATION
Part VII. Governor's Office
Chapter 11. Elderly Affairs
Subchapter D. Service Provider Responsibilities
§1239. Adult Protective Services for the Elderly

A. Overview of Elderly Protective Services

1. Purpose. The purpose of Elderly Protective Services (EPS) is to protect adults who cannot physically or mentally protect themselves and who are harmed or threatened with harm through action or inaction by themselves or by the individuals responsible for their care or by other persons.

2. Goal and Objectives

a. The goal of Elderly Protective Services is to assure that adults in need of protection are able to maintain the highest quality of life in the least restrictive environment appropriate to their individual capabilities and life style and wishes.

b. The objectives of Elderly Protective Services are:

i. - v. ...

3. Philosophy

a. The following principles are basic to the delivery of Elderly Protective Services:

i. - ii. ...

iii. a client has the right to make decisions on his/her own behalf unless it is clearly evident to EPS that he/she is unable to do so, or until the court grants that responsibility to another individual;

iv. ...

4. Client Rights

a. The elderly protective services client, if mentally able, has the right to:

i. - iv. ...

v. withdraw from or refuse consent for protective services if the law has not been broken and the elderly client has the capacity to refuse services.

5. Framework for Elderly Protective Services

a. The principles of family based services provide the framework for elderly protective services. Family based services are designed to provide the maximum services to a family at the time of crisis to prevent the breakup of the family unit. This approach to the delivery of social services focuses on families rather than individuals. Services in this context are intended to strengthen and maintain families and prevent family dissolution and out of home placement of the adult.

b. Elderly protective services assist families in regaining or maintaining family autonomy while at the same time assuring the protection of individuals.

c. ...

6. Definitions

Abandonment—the withdrawal of support, care, or responsibility for an elderly adult without intending to return.

Abuse—the infliction of physical or mental injury on an adult by other parties, including but not limited to such means as sexual abuse, exploitation, or extortion of funds or other things of value, to such an extent that his/her health, self-determination, or emotional well-being is endangered.

Adult—any individual eighteen years of age or older or an emancipated minor.

Capacity to Consent—the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including but not limited to provisions for health or mental health care, food, shelter, clothing, safety, or financial affairs. This determination may be based on assessment or investigative findings, observation, or medical or mental health evaluations.

Caregiver—any person or persons, either temporarily or permanently responsible for the care of an elderly person.

Caregiver Neglect—the inability or unwillingness of the caregiver to provide for basic needs (food, clothing, medicine, etc.) of an elderly person.

Collateral ...

Coordinating Counsel—according to R.S. 14:403.2 EPS is to form regional coordinating counsels to maximize community input into program operations.

Curator (Guardian) ...

Elderly ...

Elderly Protection Agency—the Office of Elderly Affairs in the Office of the Governor (GOEA) for any individual sixty years of age or older in need of elderly protective services as provided in this Section. The Department of Health and Hospitals is the Adult Protection Agency for any individual between the ages of eighteen and fifty-nine years of age in need of adult protective services as provided in this Section.

Exploitation—the illegal or improper use or management of an elderly person's assets, or property, or the use of an elderly person's power of attorney or guardianship for one's own profit or advantage.

Extortion ...

Incompetency ...

Interdict (Ward) ...

Interdiction (Guardianship)—a judicial proceeding which authorizes a court, upon petition, to appoint a curator (guardian) for a person found to be incapable of managing his/her person, estate, or property because of mental deficiency, deviation or physical infirmity. (In accordance with the Civil Code Articles 389-426.)

Neglect ...

Physical Abuse ...

Protective Services—include but are not limited to:

i. conducting investigations and assessments of complaints of possible abuse, neglect, or exploitation to determine if the situation and condition of the adult warrant further action;

ii. preparing a social services plan utilizing community resources aimed at remedying abuse, neglect, and exploitation;

iii. case management to assure stabilization of the situation;

iv. referral for legal assistance to initiate any necessary extrajudicial remedial action.

Provisional Curator—an individual appointed by the court to manage the affairs and/or person of the interdict. The authority of the provisional curator expires thirty days after

the date of appointment or when a curator is appointed. (In accordance rev Civil code Articles 389-426.)

Regional Office—one of the seven (7) EPS Region offices located throughout the state. Region 1, New Orleans; Region 2, Baton Rouge; Region 3, Lafayette; Region 4, Lake Charles; Region 5, Alexandria; Region 6, Monroe; Region 7, Shreveport.

Self-Neglect—the failure, either by the adult's action or inaction, to provide the proper or necessary support or medical, surgical or any other care necessary for his/her own well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall for that reason alone be considered to be self-neglected.

Sexual Abuse ...

7. Legal Basis

a. R.S. 14:403.2 provides the statutory authority for elderly protective services. The intent of the law is to authorize the least possible restriction on the exercise of personal and civil rights consistent with the adult's need for services and to require that due process be followed in imposing such restrictions.

b. The major areas covered by R.S. 14:403.2 include:

i. Responsibilities of the Elderly Protection Agency—GOEA is responsible for the provision of elderly protective services to persons age 60 or older. These services shall include a prompt investigation and assessment;

ii. - iii. ...

iv. Consent to Service—Protective services may not be provided in cases of self neglect to any adult who does not consent to such service or who, having consented, withdraws such consent based on the functional capacity of the individual.

B. Confidentiality

1. For purposes of elderly protective services, confidentiality is defined as the protection of social and other information concerning an adult, his/her family and his/her situation which is disclosed to the EPS program/worker by the elder, the reporter and/or collaterals. The intent of confidentiality is to prevent information and/or records concerning an elder from being released to persons who have no legitimate need for or right to such information and/or records.

2. When making a determination regarding release of the elderly case information, the following criteria shall be considered:

a. has the elder, or his/her legally authorized representative consented to the release of the information;

b. ...

c. if the elder lacks the capacity to consent and has no legally authorized representative, will the release of the information directly benefit the adult, facilitate treatment, or prevent or ameliorate the abuse/neglect/exploitation problem?

3. If the answer to any of the questions in Paragraph 2 of this Subsection is yes, the information may be released. If there are any questions regarding whether information should be released, the information shall not be released without supervisory and/or legal consultation with the GOEA staff attorney.

4. ...

C. Intake

1. ...

2. Eligibility for Elderly Protective Services. To be eligible to receive protective services through GOEA the adult must be:

a. - b. ...

c. alleged to be unable to provide for his/her own well being which results in danger to his/her own health and/or safety; and/or

d. alleged to be unable to protect him/herself from abuse/neglect/financial exploitation.

3. Types of Abuse/Neglect Accepted for Investigation

a. - f. ...

g. Abandonment.

4. - 6.a. ...

b. Subsequent. A report of another incident of abuse/neglect involving the same adult while the case is open which alleges a type of abuse/neglect different from the Initial Report. The EPS worker responsible for the case shall investigate all Subsequent Reports as if they were Initial Reports.

6.c. - d. ...

7. Nonacceptance of a Report

a. When a report is not accepted for investigation, the EPS worker shall advise the reporter of the reason for nonacceptance and will provide the following, as appropriate:

i. - ii. ...

ii. referral to a law enforcement agency or to the district attorney;

iii. referral to the appropriate agency for investigation if the client is not within the jurisdiction of the EPS program.

b. ...

D. Investigation Procedures

1. Priorities for Investigation of Cases. Cases accepted for investigation shall be prioritized as high, medium and low according to the severity of factors of abuse/neglect based on information provided by the reporter and other sources. The priority level of the case determines the time frame and agency commitment of staff and resources for the investigation. Investigation of low and medium priority cases may be limited if all EPS workers in a regional office have 35 active cases in any one month period.

2. - 3.c. ...

4. Determination of Appropriate EPS Regional Office to Investigate the Report.

a. The EPS Regional Office responsible for the investigation shall be the one which serves the parish in which the adult normally resides.

b. If the adult's residence changes to another region before completion of the investigation, the original EPS worker will be responsible for the case unless it is determined that distances between offices are too great.

5. - 6. ...

7. Report to the District Attorney. A report shall be sent to the district attorney on all cases where it appears after investigation that an adult has been abused and neglected by

a third party or parties and that the problem cannot be remedied by EPS through extrajudicial means. A list of services which are available to ameliorate the abuse and neglect situation shall be provided in the report. Such reports shall be reviewed and approved by the EPS Program Manager or his/her designee prior to referral.

8. Exceptions to EPS Investigation Procedures.

a.i. ...

ii. Licensed and Certified Nursing Facilities (includes all Title XIX Facilities). Allegations of abuse/neglect of an adult who resides in a nursing facility shall not be accepted for investigation except as provided below. Reporters will be referred to the Department of Health and Hospitals, Bureau of Health Standards, Baton Rouge, LA and/or to the State Long Term Care Ombudsman Program. The exception to this rule is in cases where a resident of a nursing facility is alleged to be abused or exploited by someone visiting the facility or while visiting outside the facility.

iii. ...

b. Accepted for investigation:

i. Adult Residential Care Home. Allegations of abuse/neglect of an adult who resides in a board and care home will be accepted for investigation. Such reports should also be reported to the Department of Social Services, Division of Licensing, and the State Long-Term Care Ombudsman Program.

E.1. ...

2. Service Plan

a. Development. The service plan is the basis for the activities that the EPS worker and service providers will undertake. The focus of the service plan is time limited and it is expected that involvement of the EPS worker in the case will not exceed three months. Therefore, time frames for service delivery which require EPS worker participation should take this limitation into consideration.

b. ...

F. Complaints Against Elderly Protective Services (EPS)

1. For purposes of this policy the following definitions apply:

a. *Complaint*—any allegation of wrongdoing of misconduct by EPS. Complaints may submitted orally or in writing.

b. *Misconduct*—any action by an Elderly Protective Services Investigator which is considered detrimental to the welfare of an elderly person that is in violation of laws and regulations that govern the EPS Program, including Section 721 of the Older Americans Act, LA R.S. 14:403.2 et seq., and LAC 4:VII.1229.

Any complaint or allegation of misconduct should be referred to the EPS Regional Supervisor who will subsequently investigate these complaints. Following the Regional Supervisor's investigation of said complaint, the information will be forwarded to the EPS Director for review and disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:403.2.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:327 (March 1993), amended LR 20:543 (May 1994), LR 24:

Robert Seemann, Elderly Protective Services Program Director, is responsible for responding to inquiries concerning the proposed rule. Interested parties may submit written comments to the Governor's Office of Elderly Affairs, PO Box 80374, Baton Rouge, LA 70806. Written comments will be accepted until 5:00 p.m. July 29, 1998. A public hearing on this proposed rule will be held on July 29, 1998 at 412 North 4th Street, Baton Rouge, LA, at 10:00 a.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at this hearing.

P.F. "Pete" Arceneaux, Jr.
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Adult Protective
Services for the Elderly**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the proposed rule changes will not result in costs or savings to state or local governmental units. The proposed amendments will: identify Elderly Protective Services as the entity statutorily authorized to protect the elderly; update policy manual definitions to conform to current statute; and create a policy for complaints against Elderly Protective Services.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not affect competition and will have no impact on employment.

P.F. "Pete" Arceneaux
Executive Director
9806#063

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Office of Elderly Affairs**

Long Term Care Assistance
Program (LAC 4:VII.1237)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend §1237,

“Long Term Care Assistance Program,” effective September 20, 1998. The purpose of this rule change is to modify §1237.E to specify how the benefits paid to program participants shall be established. This rule complies with R.S. 40:2802.

**Title 4
ADMINISTRATION**

Part VII. Governor's Office

Chapter 11. Elderly Affairs

Subchapter D. Service Provider Responsibilities

§1237. Long Term Care Assistance Program

A. - D.2.d. ...

E. Program Benefits

1. In accordance with R.S. 40:2802(c), the benefits under the program shall be established by the Commissioner of Administration, with an upper limit of \$350 per participant per month. The rate shall be set by the Commissioner with oversight by the Senate and House Committee on Health and Welfare, through rules and regulations.

E.2. - F.2. ...

G. Eligibility Determinations

1. The agency shall provide written notification to each applicant found to be ineligible within thirty (30) days of receipt of application.

2. Those applicants found to be eligible will begin receiving reimbursements within thirty (30) days of receipt of application.

3. Prior to making a final determination, the agency shall return applications which are incomplete or questionable (e.g., expenses reported exceed all income) for additional information.

4. Redetermination of Eligibility

a. If an applicant is determined ineligible for benefits under this program because (s)he does not meet the requirements in §1237.D.1, and the applicant's circumstances change, the applicant may reapply in accordance with §1237.F.

b. A redetermination of eligibility for this program shall be made based upon the current financial status of the applicant.

H.1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2802(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 18:1257 (November 1992), amended LR 19:627 (May 1993), LR 24:

Steven Beck is the person responsible for responding to inquiries concerning the proposed rule. Interested parties may submit written comments to the Governor's Office of Elderly Affairs, PO Box 80374, Baton Rouge, LA 70806. Written comments will be accepted until 5:00 p.m. July 29, 1998. A public hearing on this proposed rule will be held on July 29, 1998 at 412 North 4th Street, Baton Rouge, LA, at 10:00 a.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at this hearing.

P.F. "Pete" Arceneaux, Jr.
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Long Term Care Assistance Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the proposed rule changes will not result in costs or savings to state or local governmental units. This revision will modify §1237 of the GOEA Policy Manual, "Long Term Care Assistance Program", to specify how the benefits paid to program participants shall be established.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This change will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This change will not affect costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will not affect competition or employment.

P.F. "Pete" Arceneaux
Executive Director
9806#070

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Office of Elderly Affairs**

Long Term Care Ombudsman (LAC 4:VII.1229)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend §1229 of the GOEA Policy Manual effective September 20, 1998. The purposes of this amendment are to update definitions to conform to current related statutory language; to modify the provisions for designation of local ombudsman entities; to create separate visitation standards for adult residential care facilities and skilled nursing facilities in hospitals and rehabilitation centers; and to modify the on-going training requirements for ombudsmen. This rule complies with Section 701 of the Older Americans Act.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 11. Elderly Affairs

Subchapter D. Service Provider Responsibilities

§1229. Office of the State Long Term Care Ombudsman

A. - B.1. ...

2. a nursing facility as defined in Section 1919(a) of the Social Security Act;

3. a nursing home as defined in Section 1098(3) of the Social Security Act;

4. any nursing home or adult residential care home licensed by the state or required to be licensed by the state under the terms of R.S. 40:2009.12, and R.S. 40:2151-2163.

C.1. - 4. ...

5. to provide information to public agencies, legislators, the general public, the media and others, as deemed necessary and feasible by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities;

C.6. ...

7. to coordinate ombudsman services with the protection and advocacy systems for individuals with disabilities established under part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.), under the Protection and Advocacy of Mentally Ill Individuals Act of 1986 (42 U.S.C.10801 et seq.); and under the Protection and Advocacy of Individual Rights (29 U.S.C. 794(e)); and

8. to include any area or local ombudsman entity designated by the State Long Term Care Ombudsman.

D.1. - D.2.a.vii. ...

b. The State Ombudsman shall designate each local ombudsman entity. Any representative (as defined in R.S. 40:2010.1) of an entity so designated (whether an employee or an unpaid volunteer) shall be treated as a representative of the Office for purposes of this Section.

D.2.c.i. ...

ii. submit for approval by the State Long Term Care Ombudsman a written plan of visitation which provides for regular visitation to each facility in the service area by program personnel. Every facility must be visited by a certified ombudsman at least once per month, except that skilled nursing facilities located in hospitals and rehabilitations centers not otherwise licensed as long-term care facilities must be visited a minimum of once every six months and adult residential care homes must be visited at least quarterly unless conditions warrant more frequent visitation. The plan of visitation shall be incorporated into the contract with GOEA.

C.2.c.iii. - E.2.a.i. ...

ii. college credit may be substituted for the service requirement at the discretion of the State Ombudsman.

E.2.b.i. - v. ...

vi. to visit in each long term care facility within the service area at least once a year;

E.2.b.vii. - E.3.a.i. ...

ii. comparable experience may be substituted for the educational requirement at the discretion of the State Ombudsman.

E.3.b.i. - 4.b.vi. ...

vii. to attend at least six hours of training a year on topics related to nursing homes, aging, managed care and the ombudsman program.

F.1. - 2.a. ...

b. The ombudsman shall be assigned to a long term care facility(ies) by the State Ombudsman after consultation with the ombudsman, and the ombudsman coordinator. The administrator of the long term care facility where the

ombudsman is assigned shall be so informed by the State Ombudsman.

F.2.c. ...

3. Training

a. Individuals shall be certified as ombudsmen upon successful completion of the ombudsman certification training program. The training program consists of four components: an orientation program, a twenty-six hour training program, an examination, and an internship in a long term care facility. The State Ombudsman or his designee shall conduct the certification program. Trainees must meet the minimum personnel qualifications specified in §1229.E.3.a.

F.3.b.i. - x. ...

xi. ombudsman policies and procedures;

xii. investigative techniques; and

xiii. managed care.

c. Certification must be renewed annually. Renewal is based on successful completion of at least fifteen (15) contact hours of in-service training each year and on adherence to ombudsman policies and procedures. At least six (6) hours of this training must be sponsored by the Office. The remainder may be earned by attending any relevant training, subject to the conditions described below. If requirements for the current year have been met, hours earned during the final quarter of a calendar year may be carried over to the following year.

F.3.d. - 4.c. ...

d. Each trainee may take the examination no more than three times, without repeating the classroom component of the training. All attempts must be made within one year of the completion of the classroom component of the training. The recommendation of the Coordinator and the permission of the State Ombudsman are required before a trainee can repeat the classroom component.

F.5. - H.1. ...

2. Records. Records may be reviewed only with the written consent of the resident or the resident's legal representative. The ombudsman may review those portions of a resident's records which are relevant to resolving a specific problem. If a resident is unable to consent to such review and has no legal representative, the ombudsman shall have access to the resident's medical and social records.

I. - L.2.b.iv. ...

c. Complaints about a Coordinator

i. Complaints about a Coordinator should be directed to the State Ombudsman. Upon receipt of a complaint, the State Ombudsman shall notify the Coordinator and his/her immediate supervisor of the complaint; conduct an investigation to determine whether the complaint is valid; advise the following persons of the findings: the complainant, the Coordinator, and the director and/or other supervisory staff of the local designated ombudsman entity; and take appropriate action to remedy the situation.

ii. If the State Ombudsman fails to respond to or act upon a complaint within 30 days, the person filing the complaint may refer the complaint to the director of the Office of Elderly Affairs.

L.2.d. - 3.c.iv. ...

d. Grievances against a Coordinator. Grievances

against a Coordinator must be submitted to the State Ombudsman. Upon receipt of the grievance, the State Ombudsman shall submit a copy of the grievance to the Coordinator and his/her immediate supervisor; request that the Coordinator submit a written response within 10 working days; inform the Coordinator and the complainant of the date by which a decision shall be issued; investigate the allegation stated in the grievance; consider the relief sought by the complainant; and issue a written decision.

L.3.e. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:2010.4 and OAA Section 712(a)(5)(D).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:35 (January 1985), LR 11:1078 (November 1985), LR 13:742 (December 1987), LR 15:379 (May 1989), LR 17:600 (June 1991), LR 18:267 (March 1992), LR 24:

Ms. Linda Sadden, State Long Term Care Ombudsman, is responsible for responding to inquiries concerning the proposed rule. Interested parties may submit written comments to the Governor's Office of Elderly Affairs, PO Box 80374, Baton Rouge, LA 70806. Written comments will be accepted until 5:00 p.m. July 29, 1998. A public hearing on this proposed rule will be held on July 29, 1998 at 412 North 4th Street, Baton Rouge, LA, at 10:00 a.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at this hearing.

P.F. "Pete" Arceneaux, Jr.
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Long Term Care Ombudsman**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the proposed rule changes should result in modest cost savings in travel for local ombudsman entities; however, the exact amount is unknown. The proposed rules reduce required visitation to adult residential care facilities from monthly to quarterly and reduce required visitation to skilled nursing facilities from monthly to once every six months.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the proposed rule changes will not affect competition or employment.

P.F. "Pete" Arceneaux
Executive Director
9806#068

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Office of the Governor
Office of Elderly Affairs**

Senior Community Service
Employment Program (LAC 4:VII.1231)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) intends to amend §1231 of the GOEA Policy Manual effective August 20, 1998. The purposes of this amendment are: to redefine the terms for participation in the Older Americans Act Senior Community Service Employment Program; to redefine enrollment priorities and benefits to participants; and to establish the goal for placement at 20 percent of the number of enrollees. This rule complies with Title V of the Older Americans Act (Sections 501-508).

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 11. Elderly Affairs

Subchapter D. Service Provider Responsibilities

§1231. Senior Community Service Employment Program

A. ...

B. Program Administration. This program is funded by the U.S. Department of Labor. The Governor's Office of Elderly Affairs administers the program in the southeastern portion of Louisiana through three subgrantees. The balance of the state is served under the administration of seven national contractors:

1. Green Thumb;
2. the National Council on Aging;
3. the National Council of Senior Citizens;
4. the National Association of Hispanic Elderly;
5. the U.S. Forest Service;
6. the American Association of Retired Persons; and
7. the National Indian Council on Aging.

Slots are distributed by parish according to an equitable distribution formula. All organizations administering the Senior Community Service Employment Program are expected to comply with the distribution formula. The formula was developed by the sponsoring organizations and is reviewed annually by that group.

C. Definitions

* * *

Grantee—an eligible organization which has entered into an agreement with the U.S. Department of Labor.

Host Agency—a public agency or a private non-profit organization, other than a political party or any facility used or to be used as a place for sectarian religious instruction or worship and is exempt under 501(c)(3) of IRS Code, which provides a work site and supervision for an enrollee.

Subgrantee—an eligible organization which has a contractual agreement with the grantee to deliver services on

the local level. Potential providers are required to show proof of IRS classification 501(c)(3).

* * *

D. Eligible Applicants for Subgrantee Status

1. - 7. ...

E. Application Procedure. Organizations must submit an application in the form designated by the grantee to be considered for subgrantee status.

F. Program Description

1. Enrollees are selected according to income guidelines, residence and age. Enrollment priorities shall be:

- a. eligible individuals with greatest economic need;
- b. eligible individuals age 60 and older; and
- c. eligible individuals seeking re-enrollment.

2. Enrollees shall be offered a physical examination prior to participation in the program. Physical examinations are furnished at no cost to the enrollees and are offered only as a fringe benefit. When an enrollee objects to a physical examination, a written statement or waiver must be properly documented and signed.

3. As soon as possible after completion of enrollee's orientation and training, the subgrantee, in conjunction with the grantee, shall assign the enrollee to useful part-time community service employment in non-profit host agency. Subgrantees shall continually work toward placing enrollees in unsubsidized employment, thereby creating additional opportunities for persons to enroll. The goal for placement is 20 percent of the number of enrollees.

4. ...

5. Enrollees shall not be required to work more than 20 hours during one week. Shorter hours may be authorized by the subgrantee by means of a written agreement with the enrollee.

6. ...

7. Community service employment of an enrollee shall not result in the displacement of currently employed workers.

G. Monitoring of the Governor's Office of Elderly Affairs Subgrantees

1. Subgrantees funded through the Governor's Office of Elderly Affairs shall submit monthly and/or quarterly program reports to the Governor's Office of Elderly Affairs by the 10th working day of each month. Reports shall reflect current enrollment, placements, follow-ups and include a narrative description of activities conducted during the month.

2. Monthly financial reports shall be submitted by the subgrantee in the form designated by the Governor's Office of Elderly Affairs.

3. The Governor's Office of Elderly Affairs shall conduct biennial assessments to ensure that its subgrantees are performing in accordance with Senior Community Service Employment Program rules and regulations.

H. Project Termination. The grantee has the authority to terminate any of its contracts with a subgrantee which is not operating in accordance with Senior Community Service Employment Program rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with OAA Section 501, 20 CFR Part 674 and 20 CFR Part 89.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 10:464 (June 1984), amended LR 11:1078 (November 1985), LR 24:

Ms. Rosemary Davis, State Title V Director, is responsible for responding to inquiries concerning the proposed rule. Interested parties may submit written comments to the Governor's Office of Elderly Affairs, PO Box 80374, Baton Rouge, LA 70898-0374. Written comments will be accepted until 5:00 p.m. July 29, 1998. A public hearing on this proposed rule will be held on July 29, 1998 at 412 North 4th Street, Baton Rouge, LA, at 10:00 a.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at this hearing.

P.F. "Pete" Arceneaux, Jr.
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Senior Community
Service Employment Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This revision will modify Subsection 1231 of the GOEA Policy Manual. It redefines the terms for participation in the Older Americans Act Senior Community Service Employment Program (Title V), redefines enrollment priorities and benefits, and establishes the goal for unsubsidized job placement at 20 percent of the number of program participants (enrollees). The proposed rule changes will not result in costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This change will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no additional cost to GOEA's Title V subcontractors. Title V enrollees will benefit from the subcontractors' increased efforts to obtain meaningful employment opportunities for their clients.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Due to the increase in the job placement goal, GOEA's Older Americans Act Title V subcontractors must increase their efforts to place clients into unsubsidized employment. Therefore, job development will become a crucial part of employment counselors' activities. Employment counselors will have to actively recruit employers who are willing to hire their clients.

P.F. "Pete" Arceneaux
Executive Director
9806#061

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Investigative Subpoenas, Livestock
Management Practices, and Prescriptions
(LAC 46:LXXXV.106, 700, 705, and 707)

The Louisiana Board of Veterinary Medicine proposes to

amend LAC 46:LXXXV.106, 700, 705, and 707 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed amendment to §106 provides authority for the board or the chair of the complaint review committee acting on behalf of the board to issue investigative subpoenas and investigative subpoenas duces tecum for the purpose of discovering violations of the statutes and rules governing the practice of veterinary medicine. The board currently has authority under R.S. 49:956(5) to sign and issue subpoenas in conjunction with an adjudication proceeding. The proposed rule would allow the board to issue subpoenas related to matters under investigation.

The proposed amendments to §700 and §707 are related to accepted livestock management practices. Under R.S. 37:1514(3), the board may prescribe acts that are accepted livestock management practices and which do not require a license to practice veterinary medicine before being performed. The amendments to §700 provide definitions for alternative livestock, cosmetic surgery, and livestock. The amendments to §707 are mostly technical in nature, changing "animals" to "livestock." However, §707(5) would make clear that surgical cosmetic dehorning is defined as the practice of veterinary medicine.

The proposed amendment to §705(G) expands and clarifies an earlier amendment to this section. The proposed changes make clear that a client is not obligated to purchase a prescription medication from the prescribing veterinarian. It also makes clear that a veterinarian is not required to write a prescription unless a veterinarian-client-patient relationship exists and a veterinarian has determined that a prescription medication will be used in a patient's treatment or preventive health plan. Also, a veterinarian is not required to write a prescription for any medication that, in the veterinarian's medical judgment, is not appropriate for the patient's medical care, and a veterinarian may refuse to write a prescription if it is not directly requested by a client with whom a veterinarian-patient-client relationship exists. A written prescription can be construed to include any manner of authorization for filling a prescription, including verbal or electronic communication.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 1. Operations of the Board of Veterinary Medicine

§106. Complaint Resolution and Disciplinary Procedures

A. ...

B. Appointing a Complaint Review Committee.

1. - 3. ...

4. The board or the chair of the complaint review committee acting on behalf of the board shall have the authority to issue investigative subpoenas and investigative subpoenas duces tecum for the purpose of discovering violations of the statutes and rules governing the practice of veterinary medicine.

C. - D.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:345 (March 1993), amended LR 23:967 (August 1997), LR 24:940 (May 1998), LR 24:

Chapter 7. Veterinary Practice

§700. Definitions

Alternative Livestock—animals that have not been domesticated, but are bred or kept on a farm for use or commercial profit.

* * *

Cosmetic Surgery—that branch of veterinary medicine that deals with surgical procedures designed to improve the animal's appearance.

* * *

Livestock—domestic animals to include only cattle, hogs, sheep, and goats, bred or kept on a farm for use or commercial profit.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328 (October 1993), amended LR 20:1381 (December 1994), LR 24:941 (May 1998), LR 24:

§705. Prescribing and Dispensing Drugs

A. - F. ...

G. ...

1. A client is not obligated to purchase a prescription medication from the prescribing veterinarian. Therefore, when a veterinarian-client-patient relationship exists and a veterinarian has determined that a prescription medication will be used in a patient's treatment or preventive health plan, it shall be considered a violation of the rules of professional conduct, within the meaning of R.S. 37:1526(14), for a veterinarian to refuse to provide a written prescription to the client so long as the following conditions exist:

a. the veterinarian has determined that the patient's life is not endangered without the immediate administration of the prescription medication, and

b. in the veterinarian's medical opinion, the prescribed substance is medically safe for in-home administration by the client.

2. A veterinarian shall not be required under this section to write a prescription for controlled substances or a prescription for any medication that, in the veterinarian's medical judgment, is not appropriate for the patient's medical care.

3. A veterinarian may refuse to write a prescription under this section if it is not directly requested by a client with whom a veterinarian-patient-client relationship exists.

4. A written prescription can be construed to include any manner of authorization for filling a prescription, including verbal or electronic communication.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 6:71 (February 1980), amended LR 16:226 (March 1990), LR 19:1329 (October

1993), LR 20:1381 (December 1994), LR 23:1686 (December 1997), LR 24:

§707. Accepted Livestock Management Practices

The following are hereby declared to be accepted livestock management practices as provided by R.S. 37:1514(3):

1. The practice of artificial insemination (A.I.) and the non-surgical impregnation (with frozen embryo) of livestock to include that performed for a customer service fee or that performed on individually-owned livestock;
2. The procedure involving the collection, processing, and freezing of semen from privately owned livestock carried out by NAAB-CSS approved artificial insemination business organizations;
3. ...
4. Performing the operation of male castration, docking, or ear-marking of livestock raised for human consumption;
5. Performing the normal procedure of dehorning livestock, with the exception of surgical cosmetic dehorning, which is defined as the practice of veterinary medicine;
6. ...
7. Treating livestock for disease prevention with a non-prescription medicine or vaccine;
8. Branding and/or tattooing for identification of livestock;
9. - 10. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 9:213 (April 1983), amended LR 23:969 (August 1997), LR 24:

Interested parties may submit written comments to Charles B. Mann, executive director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on July 28, 1998. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedures Act, the hearing will be held on July 28, 1998, at 9:00 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third St., Suite 104, Baton Rouge, LA.

Charles B. Mann
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Investigative Subpoenas, Livestock
Management Practices, and Prescriptions**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendments (estimated \$350). The veterinary profession will be informed of this rule change via the board's regular newsletter, which is already a budgeted cost of the board.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect or revenue collections of state or local governmental units. There will be no revenue impact as no increase in fees will result from these amendments.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

There is no anticipated effect on employment and competition.

Charles B. Mann
Executive Director
9806#046

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

**Public Water System Capacity
Development (LAC 48:V.7707-7719)**

Under the authority of the Act to amend and reenact R.S. 40:4(A)(8) and 5.8 relative to the State Sanitary Code, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health gives notice that rulemaking procedures have been initiated to adopt the Drinking Water Capacity Development regulations, LAC 48:V.Chapter 77, Subchapter B.

The proposed rule establishes requirements of Public Water System Capacity Development as authorized under the Safe Drinking Water Amendments of 1996 and Act 814 of the 1997 Regular Session of the Louisiana Legislature, R.S. 40:4(A)(8) and 5.8. The Public Water System Capacity Development strategy will assist public water systems in acquiring and maintaining technical, managerial, and financial capacity to comply with state drinking water regulations which are no less stringent than the national primary drinking water regulations.

The proposed rule provides information as to criteria used in the Capacity Development strategy to assess and ensure that public water systems acquire and maintain technical, managerial, and financial capacity. The proposed rule includes a requirement that all new community water systems and new non-transient non-community water systems demonstrate technical, managerial, and financial capacity. The basis and rationale for this proposed rule are to develop and implement the Capacity Development strategy as authorized by the Safe Drinking Water Amendments of 1996 and Act 814 of the 1997 Regular Session of the Louisiana Legislature, R.S. 40:4(A)(8) and 5.8.

Title 48
PUBLIC HEALTH—GENERAL
Part V. Preventive Health Services
Subpart 25. Drinking Water
Chapter 77. Drinking Water Program
Subchapter B. Public Water System Capacity
Development

§7707. Introduction

A. The Department of Health and Hospitals, Office of Public Health (OPH) is the state agency within Louisiana granted primary enforcement responsibility from the United States Environmental Protection Agency (USEPA) to ensure that Public Water Systems (PWSs) within the state are in compliance with state drinking water regulations which are as stringent or more stringent than federal drinking water regulations adopted in accordance with the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.). The SDWA Amendments of 1996 authorized the State to develop and implement a Capacity Development strategy for new public water systems, public water systems applying for Drinking Water State Revolving Fund (SRF) monies, and existing public water systems to assess and ensure that such systems acquire and maintain technical, managerial, and financial capacity to facilitate compliance with and further the health protection objectives of the SDWA.

B. In accordance with the Louisiana Constitution and authorizing legislation, regulations governing Public Water System Capacity Development are promulgated by OPH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 5.8 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

§7709. Authority

Act 814 of the 1997 Regular Session of the Louisiana Legislature amended and reenacted R.S. 40:4(A)(8) and 5.8, relative to the State Sanitary Code; to require the state health officer to provide for a strategy for public water systems to comply with federal and state drinking water regulations; to define types of public water systems; and to provide for related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 5.8 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

§7711. Definitions

The following terms used in these regulations shall have the following meanings:

Business Plan—includes, but not limited to, an explanation of the assets of the system, the service area's basic needs, how these needs are to be addressed, and how the system is going to operate and sustain itself over time.

Committee of Certification—the committee created by LSA-R.S. 40:1141 through 1151, responsible for certification of public water system operators.

Community Water System—a public water system that serves year-round residents within a residential setting.

Department—the Office of Public Health (OPH) of the LA Department of Health and Hospitals (DHH).

Financial Capacity—relates to, but not limited to, revenue sufficiency, credit worthiness, and fiscal management and controls.

Managerial Capacity—relates to, but not limited to, ownership accountability, staffing and organization, and effective external linkages.

Non-Transient Non-Community Water System—a public water system that is not a community system and regularly serves at least 25 of the same persons (non-residents) over six months per year.

Operator—the individual(s), as determined by the State, who is in attendance, onsite at a public water system and whose performance, judgment and direction affects either the safety, sanitary quality or quantity of water treated or delivered.

Public Water System—a system intended to provide potable water to the public, which system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. The term includes:

a. any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system; and

b. any collection or pre-treatment storage facilities not under such control which are used primarily in connection with the system.

State—the state of Louisiana or any agency or instrumentality thereof.

State Health Officer—the assistant secretary of the Department of Health and Hospitals and/or his authorized representative.

Technical Capacity—relates to, but not limited to, source water adequacy, infrastructure adequacy, and technical knowledge and implementation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 5.8 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

§7713. New Systems

A. Business Plan. All public water systems wanting to commence operation after January 1, 1999 shall be required to submit a Business Plan to the Department to aid in the Department's determination of technical, managerial and financial capacity. Required information for the Business Plan shall be provided by the Department.

B. Operator Requirements. All prospective public water systems meeting the population requirements to require a certified operator must have an operator who holds a regular certificate in the appropriate classes(es) of certification for the population served by the system. The system must have an operator on duty at all times, or the operator must be available to respond and be on-site within an hour of notification. Any prospective public water system not meeting the population requirements at the time of request to commence operation must have an operator who has had at least sixteen (16) hours of operator training which meets the guidelines of the State Committee of Certification, and must have at least sixteen (16) hours of continuing training yearly. The system must provide such an operator on duty at all times, or the operator must be

available to respond and be on-site within an hour of notification. Such requirement for systems not meeting the population requirements for a certified operator shall remain in effect until such time as the United States Environmental Protection Agency (USEPA) requires that all public water systems have certified operators or the State requires same, whichever occurs first. At such time, the then current requirements would be applied.

C. Management Training. As a part of meeting the managerial capacity requirements, all new public water systems wanting to commence operation after January 1, 1999, must make arrangements to attend the next scheduled training session provided by the State for Board Members/Council Members/Mayors, Owners, etc. Such arrangements shall be made upon making application to the Department for approval to commence operation.

D. Financial Audit. A financial audit will be conducted on the system as one means of determining financial capacity of the public water system.

E. Approval for Operation. After January 1, 1999, written approval to commence operation for new public water systems will be given by the Department only after the Department is satisfied that technical, managerial, and financial capacity requirements are being met, in addition to all other applicable regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 5.8 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

§7715. Systems Applying For Drinking Water Revolving Loan Fund (DWRLF) Monies

A. Business Plan. Beginning with Federal Fiscal Year 98 (FFY98) Capitalization Grant Monies (DWRLF Monies), all public water systems applying for such monies must submit a Business Plan with the final application packet to the Department to aid in the Department's determination of technical, managerial, and financial capacity. Required information for the Business Plan shall be provided by the Department.

B. Operator Requirements. All prospective public water systems meeting the population requirements to require a certified operator must have an operator who holds a regular certificate in the appropriate classes(es) of certification for the population served by the system. The system must have an operator on duty at all times, or the operator must be available to respond and be on-site within an hour of notification. Any prospective public water system not meeting the population requirements at the time of request to commence operation must have an operator who has had at least sixteen (16) hours of operator training which meets the guidelines of the State Committee of Certification, and must have at least sixteen (16) hours of continuing training yearly. The system must provide such an operator on duty at all times, or the operator must be available to respond and be on-site within an hour of notification. Such requirement for systems not meeting the population requirements for a certified operator shall remain in effect until such time as the United States Environmental Protection Agency (USEPA) requires that all public water systems have certified operators or the State requires same,

whichever occurs first. At such time, the then current requirements would be applied.

C. Financial Capacity. In addition to any financial information required in the Business Plan, the public water system must meet all financial requirements of the Department of Environmental Quality (DEQ), the financial administrator for the Drinking Water Revolving Loan Fund (DWRLF).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 5.8 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

§7717. Existing Community and Non-Transient Non-Community Systems

A. Business Plan. All existing community and non-transient non-community water systems shall be required to submit a Business Plan to the Department to aid in the Department's determination of technical, managerial, and financial capacity. Required information for the Business Plan will be provided by the Department. Such plan must be submitted to the Department within six (6) months after the initial visit by the designated party of the State who is providing assistance to the public water system in preparation of the business plan.

B. Operator Requirements. All prospective public water systems meeting the population requirements to require a certified operator must have an operator who holds a regular certificate in the appropriate classes(es) of certification for the population served by the system. The system must have an operator on duty at all times, or the operator must be available to respond and be on-site within an hour of notification. Any prospective public water system not meeting the population requirements at the time of request to commence operation must have an operator who has had at least sixteen (16) hours of operator training which meets the guidelines of the State Committee of Certification, and must have at least sixteen (16) hours of continuing training yearly. The system must provide such an operator on duty at all times, or the operator must be available to respond and be on-site within an hour of notification. Such requirement for systems not meeting the population requirements for a certified operator shall remain in effect until such time as the United States Environmental Protection Agency (USEPA) requires that all public water systems have certified operators or the State requires same, whichever occurs first. At such time, the then current requirements would be applied.

C. Management Training. As a part of meeting the managerial capacity requirements, all appropriate staff of existing community and non-transient non-community water systems shall attend a training session provided by the State for Board Members, Council Members/Mayors/Owners, etc. Training sessions shall be provided periodically and appropriate parties as noted above must attend one of the scheduled sessions within six (6) months after the system has been notified that it is being evaluated for technical, managerial, and financial capacity.

D. Financial Audit. A financial audit will be conducted on the system as one means of determining financial capacity of the public water system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 5.8 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

§7719. Miscellaneous

A. Evaluations. Evaluations to determine technical, managerial, and financial capacity will be conducted in accordance with a developed strategy prepared by the Department and for which approval has been given by USEPA.

B. Coordination. Implementation of the strategy will be coordinated between the Department staff and contracting parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:4(A)(8) and 5.8 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:

A public hearing will be held on July 28, 1998 at the DEQ Maynard Ketcham Bldg., Rm. 326, 7290 Bluebonnet Rd., Baton Rouge, Louisiana, starting at 1:30 p.m. Interested parties are invited to attend and submit oral comments on the proposed regulations. Should individuals with a disability need an accommodation in order to participate, contact Sarah Bradford at the address given below or at (504) 568-5100.

All interested persons are invited to submit written comments on the proposed regulations. Such comments must be received no later than August 5, 1998 at COB, 4:30 p.m., and should be sent to Sarah Bradford, Office of Public Health, Environmental Health Services, DWRLF, P.O. Box 60630, Rm. 403, New Orleans, LA 70160 or faxed to (504) 568-7703.

This proposed rule is available for inspection at the following Office of Public Health Offices: 325 Loyola Avenue, Rm. 403, New Orleans, LA 70112; 1772 Wooddale Blvd., Baton Rouge, LA 70806; 206 E. Third St., Thibodaux, LA 70301; 825 Kaliste Saloom Rd., Ste 100, Lafayette, LA 70508; 4240 Sen. J. Bennett Johnston Ave., Lake Charles, LA 70615; 1500 Lee St., Alexandria, LA 71301; 1525 Fairfield Ave., Rm. 566, Shreveport, LA 71101; 2913 Betin St., Monroe, LA 71201; and 520 Old Spanish Trail, Slidell, LA 70458.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Public Water System Capacity Development**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation will include a cost of approximately \$480.00 as associated with publication in the *Louisiana Register*. There will be no other implementation costs to the State or local units associated with activities resulting from this proposed rule which will be totally funded by the Federal Drinking Water Revolving Loan Fund Capitalization Grant.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no significant effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This program is designed to ensure that new public water systems demonstrate technical, managerial, and financial capacity before commencing operation, to aid in the system's capacity to maintain compliance with drinking water rules, regulations and standards; to ensure that public water systems applying for drinking water revolving loan fund monies demonstrate technical, managerial, and financial capacity before receiving such monies in order for such systems to appropriately utilize, maintain, and manage the results of such monies; and to assist existing public water systems in obtaining and maintaining technical, managerial, and financial capacity to aid in achieving and maintaining compliance with drinking water rules, regulations, and standards, in accordance with the 1996 SDWA amendments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This program will generate various types of work at the local level such as restructuring of the system's management processes, technical capabilities, etc., which may provide more opportunities for employment in the private sector at that level.

David W. Hood
Secretary
9806#067

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary**

Maternal and Child Health Block Grant Application

The Department of Health and Hospitals (DHH) intends to apply for Maternal and Child Health (MCH) Block Grant Federal Funding for FY 1998-99 in accordance with Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, and with federal regulations as set forth in the Federal Register Vol. 47, Number 129, Tuesday, July 6, 1982, pages 29472-29493.

DHH will continue to administer programs funded under the MCH Block Grant in accordance with provisions set forth in Public Law 97-35 and the federal regulations. The Office of Public Health is the Office responsible for program administration of the grant.

Written comments will be accepted through August 30, 1998. Comments may be addressed to Jimmy Guidry, M.D., Assistant Secretary, Office of Public Health, 1201 Capitol Access Road, Baton Rouge, La.

The application is available for review at any regional OPH facility.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Maternal and Child Health
Block Grant Application**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This block was implemented in FY 82. Neither an increase nor a decrease in implementation costs is expected, as DHH will continue to administer these programs in accordance with existing federal and state laws and regulations. No workload change is anticipated, as the same amounts and kinds of services are expected to be delivered. Publication Cost should be included (\$45.00).

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

No effect on revenue collections is anticipated. Naturally, if the federal allotment to Louisiana for this block decreases, the State will be required to subsequently decrease the allotment to all programs covered under the block, but this is a factor beyond our control. The amount of allocation for Louisiana for FY 98-99 is expected to be \$14,401,228 which is almost the same amount as FY 97-98.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

No direct effect is anticipated on patients, groups, units of local government or state agencies other than DHH.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

No effect is anticipated on competition and employment, as the same kinds and amounts of services are to be offered. Should the amount of federal funds eventually appropriated be at such a decreased level as to warrant reductions in staff, unemployment will result.

Jimmy Guidry, M.D.
Assistant Secretary
9806#083

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Ambulatory Surgical Centers (LAC 48:I.4523)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend the licensing regulations for ambulatory surgical centers as established by R.S. 40:2131-2141. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Human Resources adopted regulations governing the licensing of Ambulatory Surgical Centers, which were published in the *Louisiana Register*, Volume 13, Number 4 and in the *Louisiana Administrative Code* Volume 8, Title 48, Book 1, 1987. The current regulations require that all ambulatory surgical centers be provided with an adequate supply of safe and palatable water

nder pressure, which must be from an approved public or private water supply properly constructed and maintained. In addition, bacterial samples collected semi-annually must show absence of bacteriological contamination.

Since the semi-annual bacterial sample is now considered to be an antiquated practice, the Department has decided to repeal this requirement. Therefore, the Department of Health and Hospitals proposes to amend Chapter 45, Section 4523 of the Ambulatory Surgical Center licensing and certification requirements, entitled Water Supply, to repeal the requirement for semi-annual bacterial sample collection. This policy change will not result in any deviation in the current licensing process and/or requirements.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 45. Ambulatory Surgical Center

§4523. Water Supply

* * *

All centers shall be provided with an adequate supply of safe and palatable water under pressure. Water must be obtained from a water supply approved by the Office of Public Health.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2131-2143.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, LR 24:

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Tuesday, July 28, 1998 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Ambulatory Surgical Centers

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of this proposed rule will not result in state costs. However, \$80 will be incurred in SFY 1998 for the state's administrative expense of promulgating this proposed rule as well as the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on federal revenue collections. However,

he federal share of promulgating this proposed rule as well as the final rule is \$80.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no cost or economic benefit to persons or non-governmental groups. However, there are costs of \$160 for promulgating this proposed rule as well as the final rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9806#062

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Medicaid—Surveillance and Utilization Review
Systems (SURS) (LAC 50:II.Chapter 41)

The Department of Health and Hospitals, Bureau of Health Services Financing, proposes to revise and expand its existing regulations regarding prepayment and postpayment review of claims made to or submitted to the Department and/or its Fiscal Intermediary by provider(s) of goods, services, and supplies who seek or may seek payment or reimbursement from the Louisiana Medicaid program for the providing of or claiming to provide goods, services, or supplies and administrative sanctions of providers and others who violate the laws, regulations, rules, policies, and/or procedures governing the Louisiana Medicaid program. These regulations are being revised and adopted in accordance with R.S. 49:950 et seq. and the Medical Assistance Program Integrity Law.

Title 50

PUBLIC HEALTH - MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 1. General /Program Integrity

**Chapter 41. Surveillance and Utilization Review
Systems (SURS)**

Subchapter A. General Provisions

§4101. Introduction and Preamble

A. The Medical Assistance Program is a four party arrangement: the taxpayer, the government, the beneficiaries and the providers. The Secretary of the Department of Health and Hospitals through this regulation recognizes the obligation to the taxpayers to assure the fiscal and programmatic integrity of the Medical Assistance Program. The Secretary has zero tolerance for fraudulent, willful, abusive or other ill practices perpetrated upon the Medical Assistance Program by providers, providers-in-fact and others, including beneficiaries. Such practices will be vigorously pursued to the fullest extent allowed under the applicable laws and regulations. The Secretary, however, recognizes the responsibility to assure that actions brought in pursuit of providers, providers in fact and others, including beneficiaries,

nder this regulation are not frivolous, vexatious or brought primarily for the purpose of harassment. The Secretary also recognizes that when determining whether a fraudulent pattern of incorrect submissions exists under this regulation, the department has an obligation to demonstrate that the pattern of incorrect submissions is material as defined under this regulation prior to imposing a fine or other monetary sanctions which are greater than the amount of the identified overpayment resulting from the pattern of incorrect submissions. Providers, providers-in-fact and others, including beneficiaries, recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria and procedures. In the case of an action brought for a pattern of incorrect submissions, providers and providers-in-fact recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions the department may impose judicial interest on any outstanding recovery or recoupment, and/or reasonable cost and expenses incurred as the direct result of the investigation and/or review including, but not limited to, the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

B. The Department of Health and Hospitals, Bureau of Health Services Financing (BHSF) has adopted this regulation to:

1. establish procedures for conducting surveillance and utilization review of providers and others;
2. establish conduct which cannot be engaged in by providers and others;
3. establish grounds for sanctioning providers and others who engage in prohibited conduct; and
4. establish the procedures to be used when sanctioning or otherwise restricting a provider and others under the Louisiana Medicaid program.

C. The purpose of this regulation is to assure the quality, quantity, and need for such goods, services, and supplies and to provide for the sanctioning of those who do not provide adequate goods, services, or supplies and/or request payment or reimbursement for goods, services, or supplies which do not comply with the requirements of federal laws, federal regulations, state laws, state regulations, and/or the rules, procedures, criteria and/or policies governing providers and others under the Louisiana Medicaid program;

D. A further purpose of this regulation is to ensure the integrity of the Louisiana Medicaid program by providing methods and procedures to:

1. prevent, detect, investigate, review, hear, refer, and report fraudulent and/or abusive practices, errors, over-utilization, or under-utilization in the Medicaid program by providers and others;
2. impose any and all administrative sanctions and remedial measures authorized by law or regulation, which are appropriate under the circumstances;
3. pursue recoupment or recovery arising out of prohibited conduct and/or overpayments;
4. allow for informal resolution of disputes between the Louisiana Medicaid program and providers and others;
5. establish rules, policies, criteria and procedures; and
6. other functions as may be deemed appropriate.

E. Nothing in this regulation is intended, nor shall it be construed, to grant any person any right to participate in the Louisiana Medicaid program which is not specifically granted by federal law or the laws of this state or to confer upon any person rights or privileges which are not contained within this regulation.

F. This regulation shall consist of LAC 50:II.Chapter 41.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4103. Definitions

A. The following specific terms shall apply to all those participating in the Louisiana Medicaid program, either directly or indirectly, and shall be applied when making any and all determinations related to this and other departmental regulations, rules, policies, criteria, and procedures applicable to the Louisiana Medicaid program and its programs.

Affiliate—any person having an overt or covert relationship or association with a provider such that the provider is directly or indirectly influenced or controlled by the affiliate or has the power to do so. Any person who shares in the proceeds or has the right to share in the proceeds of a provider is presumed to be an affiliate of that provider. Any person with a direct or indirect ownership interest in a provider is presumed to be an affiliate of that provider.

Agent—a person who is employed by or has a contractual relationship with a health care provider or who acts on behalf of the health care provider.

Agreement to Repay—a formal written and enforceable arrangement to repay an identified overpayment, interest, monetary penalties and/or costs and expenses.

Billing Agent—any person, not an employee of the provider, who performs any or all of the provider's billing functions. Billing agents are presumed to be an agent of the provider.

Billing or Bill—submitting, or attempting to submit, a claim for goods, supplies, or services for payment or reimbursement from the Medical Assistance Program.

Claim—any request or demand, including any and all documents or information required by federal or state law or by rule or required as a condition of enrollment as a health care provider, made against medical assistance program funds for payment. A claim must be submitted on the proper form(s), supportable by the required documentation(s), relate to a program for which the provider was enrolled, and must be provided to a recipient or on behalf of a recipient who was eligible to receive the good, service, or supply. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. In the case of a claim based on a cost report, any entry or omission in a cost report, book of account or other documents used or intended to be used to support a cost report shall constitute a claim. Each claim may be treated as a separate claim, or several claims may be combined to form one claim

Claims Review or Payment Review—the process of reviewing documents and/or other information or sources

required and/or related to the payment or reimbursement to a provider by the department, BHSF, SURS and/or the fiscal intermediary in order to determine if the bill or claim should be or should have been paid or reimbursed. Payment review and claims review are the same process.

Contractor—any person with whom the provider has a contract to perform a service or function on behalf of the provider. A contractor is presumed to be an agent of the provider.

Corrective Action Plan—a written plan, short of an administrative sanction(s), agreed to by a provider, provider-in-fact or other person with the department, BHSF, Program Integrity Division and/or SURS designed to remedy any inefficient, aberrant and/or prohibited practices by a provider, provider-in-fact or other person. A corrective action plan is not a sanction.

Department—the Louisiana Department of Health and Hospitals.

Deputy Secretary—the Deputy Secretary of the department and/or authorized designee.

Director of Program Integrity or Assistant Director of Program Integrity—the individual whom the Secretary has designated as the Director, program manager or section chief of the Program Integrity Division or the designated assistant to the Director of Program Integrity Division respectively and/or their authorized designee.

Director of the Bureau of Health Services Financing—the Director of BHSF and/or authorized designee.

Exclusion from Participation—a sanction that terminates a provider, provider-in-fact or other person from participation in the Louisiana Medicaid program, or one or more of its programs and cancels the provider's provider agreement.

a. A provider who is excluded may, at the end of the period of exclusion, reapply for enrollment.

b. A provider, provider-in-fact or other person who is excluded may not be a provider or provider-in-fact, agent of a provider, or affiliate of a provider or have a direct or indirect ownership in any provider during their period of exclusion.

Federal Regulations—the provisions contained in the *Code of Federal Regulations* (CFR) and/or the *Federal Register* (FR).

Finalized Sanction or Final Administrative Adjudication or Order—a final order imposed pursuant to an administrative adjudication which has been signed by the Secretary or the Secretary's authorized designee.

Fiscal Agent or Fiscal Intermediary—an organization or legal entity which the department contracts with to provide for the processing, review of and/or payment of provider bills and claims for reimbursement on behalf of the Louisiana Medicaid program.

Goods, Services or Supplies—any goods, items, devices, supplies, or services for which a claim is made, or is attempted to be made, in whole or in part from funds of the Medical Assistance Program.

Health Care Provider—any person furnishing or claiming to furnish a good, service, or supply under the medical assistance programs as defined in R.S. 46:437.3a and any other person defined as a health care provider by federal or state law or by rule. *Provider* as used in this rule shall mean health care

provider. A *provider-in-fact* as defined in this rule shall mean a health care provider.

Identified Overpayment—the amount of overpayment made to or requested by a provider which has been identified in the finalized sanction, final administrative adjudication or order.

Indirect Ownership—an ownership interest in an entity that has an ownership interest in a provider. This term includes an ownership interest in any entity that has an indirect ownership interest in a provider.

Informal Hearing—an informal conference between the provider, provider-in-fact or other persons and the Director of Program Integrity and/or the SURS manager related to a notice of corrective action, notice of withholding of payments and/or notice of sanction.

Investigator or Analyst—any person authorized to conduct investigations on behalf of the department, BHSF, Program Integrity Division, SURS and/or the fiscal intermediary, either through employment or contract for the purposes of payment and/or programmatic review.

Investigatory Process—the examination of the provider, provider-in-fact, agent-of-the-provider, or affiliates, and any other person or entity, and any and all records held by or pertaining to them pursuant to a written request from BHSF. No adjudications are made during this process.

Knew or Should Have Known—the person knew or should have known that the activity engaged in or not engaged in was prohibited conduct under this regulation or federal or state laws and regulations. The standard to be used in determining *knew* or *should have known* is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

Knowing or Knowingly—the person has actual knowledge of the information, or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information. The standard to be used in determining knowledge is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

Law—the constitutions, statutory and/or code provisions of the federal government and the government of the state of Louisiana.

Louisiana Administrative Code (LAC)—the *Louisiana Administrative Code* and/or the *Louisiana Register*.

Managing Employee—any person who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of a provider. A managing employee includes, but is not limited to, a CEO, president, general manager, business manager, administrator, or Director of the provider. A managing employee is presumed to be a provider-in-fact.

Medical Assistance Program or Medicaid—the Medical Assistance Program (Title XIX of the Social Security Act), commonly referred to as *Medicaid*, and other programs operated by and funded in the department which provide payment to health care providers.

Notice—actual or constructive notice.

Notice of an Action—a written notification of an action taken or to be taken by the department, BHSF and/or SURS. A notice must be signed by or on behalf of the Secretary, Director

f BHSF, and/or Director of Program Integrity.

Ownership Interest—the possession, directly or indirectly, of equity in the capital or the stock, or right to share in the profits of a health care provider.

Payment or Reimbursement—the payment or reimbursement to a provider from medical assistance programs' funds pursuant to a claim, or the attempt to seek payment for a claim.

Person—any natural person, company, corporation, partnership, firm, association, group, or other legal entity or as otherwise provided for by law.

Policies, Criteria or Procedure—those things established or provided for through departmental manuals, provider updates, remittance advice or bulletins issued by the Medical Assistance Program or on behalf of the Medical Assistance Program.

Program—any program authorized under the Medical Assistance Program.

Program Integrity Division (PID)—the Program Integrity Unit under BHSF within the department, its predecessor and successor.

Provider Agreement—the document(s) signed by or on behalf of the provider and those things established or provided for in R.S. 46:437.11 - 437.14 or by rule, which enrolls the provider in the Medical Assistance Program and/or one or more of its programs and grants to the provider a provider number and the privilege to participate in Medicaid of Louisiana and/or one or more of its programs.

Provider Enrollment—the process through which a person becomes enrolled in one or more of the Medical Assistance Program or one of its programs for the purpose of providing goods, services, or supplies to one or more Medicaid recipients and/or submissions of claims.

Provider-in-Fact—person who directly or indirectly participates in management decisions, has an ownership interest in the health care provider, or other persons defined as a provider-in-fact by federal or state law or by rule. A person is presumed to be a provider-in-fact if the person is:

- a. a partner;
- b. a board of Directors member;
- c. an office holder; and/or
- d. a person who performs a significant management or administrative function for the provider, including any person or entity who has a contract with the provider to perform one or more significant management or administrative functions on behalf of the provider;
- e. a person who signs the provider enrollment paper work on behalf of the provider;
- f. a managing employee;
- g. an agent of the provider, or a billing agent may also

be a provider-in-fact for the purpose of determining a violation and the imposing of a sanction under this regulation.

Provider Number—a provider billing or claim reimbursement number issued by the department through BHSF under the Medical Assistance Program.

Random Statistical Sample—a statistical formula and sampling technique used to produce a statistical extrapolation of the amount of overpayment made to a provider and/or volume of the violations.

Recoupment—recovery through the reduction, in whole or in part, of payments and/or reimbursements to a provider.

Recovery—the recovery of overpayments, damages, fines, penalties, costs, expenses, restitution, attorney's fees, or interest or settlement amounts.

Referring Provider—any provider, provider-in-fact or anyone operating on behalf of the provider who refers a recipient to another person for the purpose of providing goods, services, or supplies.

Rule or Regulation—any rule or regulation promulgated by the department in accordance with the Administrative Procedure Act and any federal rule or regulation promulgated by the federal government in accordance with federal law.

Sanction—any action by the department, BHSF, and/or SURS which is specifically labeled as a sanction.

Secretary—the Secretary of the department or authorized designee.

SURS Manager—the individual designated by the Secretary as the manager of SURS and/or authorized designee.

Surveillance and Utilization Review Section (SURS)—the section within BHSF assigned to identify, conduct reviews, and sanction providers resulting from payments to and claims from providers, and any other functions or duties assigned by the Secretary.

Suspension from Participation—occurs between the issuing of the notice of the results of the informal hearing and the issuing of the final administrative adjudication or order.

Terms of the Provider Agreement—the terms contained in the provider agreement and/or related documents and established or provided for in R.S. 46:437.11 - 437.14 or established by law or rule.

Undersecretary—the Undersecretary of the department or authorized designee.

Violations—any practice or activity by a provider, provider-in-fact, agent-of-the-provider, affiliate, and/or other persons which is prohibited by law or regulation.

Withholding of Payments—to reduce or adjust the amount, in whole or in part, to be paid to a health care provider for pending or future claims during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the health care provider.

Working Days—Monday through Friday, except for legal holidays and other situations when the department is closed.

B. General Terms. Definitions contained in applicable federal laws and regulations shall also apply to this and all department regulations. In the case of a conflict between federal definitions and departmental definitions, the department's definition shall apply unless the federal definition, as a matter of law, supersedes a departmental definition. Definitions contained in applicable state laws shall also apply to this and all departmental definitions. In the case of a conflict between a state statutory definition and a departmental definition, the departmental definition shall apply unless the state statutory definition, as a matter of state law, supersedes the departmental definition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4105. Material

A. The Secretary of the Department of Health and Hospitals establishes the following definitions of *Material*:

1. For the purpose of the LSA-R.S. 48:438.3 as required under LSA-R.S. 48:438.8D, in determining whether a pattern of incorrect submissions exists in regards to an alleged false or fraudulent claim the incorrect submissions must be five (5) percent or more of the total claims which are the subject of the action filed.

2. For the purpose this regulation, in determining whether a pattern of incorrect submissions exists in regards to an alleged fraudulent or willful violation the incorrect submissions must be five (5) percent or more of the total claims being subjected to claims review under the provisions of this regulation.

3. Statistically valid sampling techniques may be used by either party to prove or disprove whether the pattern was material.

B. This provision is enacted under the authority provided in LSA R.S. 46:438.8D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4107. Random Statistical Sampling

A. Statistical Sampling techniques may be used by any party to the proceedings.

B. A statistically valid sampling technique may be used to produce a statistical extrapolation of the amount of overpayment made to a provider and/or the volume or number of violations committed by a provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter B. Claims Review: Prepayment and/or Postpayment Review

§4109. Departmental and Provider Obligations

A. The department, through the Secretary, has an obligation, imposed by federal and state laws and regulations, to review bills and claims submitted by providers before payment is made and after. Payments made by the Louisiana Medicaid program are subject to review by the Department of Health and Hospitals, Bureau of Health Services Financing, Program Integrity Division and/or the fiscal intermediary at anytime to ensure the quality, quantity, and need for goods, services, or supplies provided to or for a recipient by a provider, and to protect the fiscal and programmatic integrity of the Louisiana Medicaid program and its programs. It is the function of the Program Integrity Division (PID) and the Surveillance and Utilization Review Section (SURS) to provide for and administer the utilization review process within the department. The Secretary also recognizes his responsibility to assure that claims review brought under this

regulation are not frivolous, vexatious or brought primarily for the purpose of harassment. The Secretary also recognizes that, when determining whether a fraudulent pattern of incorrect submissions exists under this regulation, the department has an obligation to demonstrate that the pattern of incorrect submissions are material as defined under this regulation prior to imposing a fine or other monetary sanctions which are greater than the amount of the identified or projected overpayment resulting from the pattern of incorrect submissions.

B. Providers have no right to receive payment for bills or claims submitted to BHSF or its fiscal intermediary. Providers only have a right to receive payment for valid claims. Payment of a bill or claim does not constitute acceptance by the department or its fiscal intermediary that the bill or claim is a valid claim. The provider is responsible for maintaining all records necessary to demonstrate that a bill or claim is in fact a valid claim. It is the provider's obligation to demonstrate:

1. that the bill or claim submitted was for goods, services, and/or supplies provided to a recipient who was entitled to receive the goods, services, and/or supplies;

2. that the goods, services, and/or supplies were medically necessary and/or otherwise properly authorized;

3. that the goods, services, and/or supplies were provided by and/or authorized by an individual with the necessary qualifications to make that determination; and

4. that the goods, services, and/or supplies were actually provided to the appropriate recipient in the appropriate quality and quantity by an individual qualified to provide the good, service or supply; or

5. in the case of a claim based on a cost report, that each entry is complete, accurate and supported by the necessary documentation.

C. The provider must maintain and make available for inspection all documents required to demonstrate that a bill or claim is a valid claim. Failure on the part of the provider to adequately document means that the goods, services, and/or supplies will not be paid for or reimbursed by the Louisiana Medicaid program. Inadequate or improper documentation equals no payment.

D. A person has no property interest in any payments or reimbursements from Medicaid which are determined to be an overpayment or are subject to payment review.

E. Providers, providers in fact and others, including beneficiaries, recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria and procedures. In the case of an action brought for a pattern of incorrect submissions, providers and providers in fact recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions the department may impose judicial interest on any outstanding recovery or recoupment, and/or reasonable cost and expenses incurred as the direct result of the investigation and/or review including, but not limited to, the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

F. In determining the amount to be paid or reimbursed to

provider any and all overpayments, recoupment or recovery must be taken into consideration prior to determining the actual amount owed to the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4111. Claims Review

A. BHSF establishes the following procedures for review of bills and claims submitted to it or its fiscal intermediary.

1. Prepayment Review.

a. Bills or claims submitted by a provider may be reviewed for fifteen days from date the payment or reimbursement is ordinarily sent to a provider by BHSF and/or its fiscal intermediary prior to the issuing of or denial of payment or reimbursement, unless the Director of BHSF and/or the Director of Program Integrity determines that reliable information exists which would indicate that payment should not be made or the provider or provider-in-fact has been placed on claims review for cause. Cause exists when the requested payment or reimbursement exceeds by ten percent or more the provider's average payment or reimbursement during the thirty day period prior to prepayment review.

b. If, during the prepayment review process, it is determined that the provider may have been or may be overpaid, BHSF and/or its fiscal intermediary must conduct an investigation to determine the reasons for and estimates of the amount of the alleged overpayments.

i. If it is determined that evidence exists which would lead the Director of BHSF and/or the Director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, and/or affiliate of the provider has engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

ii. If it is determined that evidence exists that overpayments may have occurred through reasons other than fraudulent, false or fictitious billing or willful misrepresentation, current and future payments may be withheld.

c. Prepayment review is not a sanction and cannot be appealed nor is it subject to an informal hearing. If prepayment review results in withholding of payments, the provider or provider-in-fact will be notified within five working days of the determination to withhold payments. In the case of an ongoing criminal or outside investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person. Denials or refusals to pay individual bills are not withholdings of payments.

d. Whether prepayment review is conducted is at the sole and absolute discretion of the Secretary, Director of BHSF, and/or the Director of Program Integrity.

2. Postpayment Review

a. Providers have a right to receive payment only for those bills which are valid claims. A person has no property interest in any payments or reimbursements from Medicaid which are determined to be an overpayment or are subject to payment review. After payment to a provider, BHSF and/or its

iscal intermediary may review any or all payments made to a provider for the purpose of determining if the amounts paid were for valid claims.

b. If, during the postpayment review process, it is determined that the provider may have been overpaid, BHSF and/or its fiscal intermediary must conduct an investigation to determine the reasons for and estimated amounts of the alleged overpayments.

i. If it is determined that evidence exists that would lead the Director of BHSF and/or the Director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, and/or affiliate of the provider may have engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

ii. If it is determined that evidence exists that overpayments may have occurred through reasons other than fraud or willful misrepresentation, current and future payments may be withheld.

c. Postpayment review is not a sanction and is not appealable nor subject to an informal hearing. If postpayment review results in withholding of payments, the provider and/or provider-in-fact will be notified within five working days of the determination to withhold payments. In the case of an ongoing criminal or outside investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person. Denials or refusals to pay individual bills are not withholdings of payments.

d. Whether postpayment review is conducted is at the sole and absolute discretion of the Secretary, Director of BHSF, and/or Director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4113. Claims Review Scope and Extent

A. Prepayment and postpayment review may be limited to specific items or procedures or include all billings or claims by a provider.

B. The length of time a provider is on postpayment review shall be at the sole and absolute discretion of the Secretary, Director of BHSF, and/or Director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter C. Investigations

§4115. Formal or Informal Investigations

Prepayment or postpayment review may be conducted either through a formal or informal process. The informal investigatory process may be conducted in any manner. The formal investigatory process shall be conducted in compliance with procedures established in Subchapter C. The scope and manner in which an investigation is conducted shall be at the discretion of the Director of BHSF and/or the Director of Program Integrity and/or the SURS manager. The fact that an investigation is conducted in violation of the procedures established by this rule does not invalidate the results of that

investigation. The Secretary has a responsibility to assure that the investigatory process is not used for the purpose of harassment of any person or entity or initiated in bad faith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4117. Informal Investigatory Process

An informal investigation may be initiated without cause and requires no justification. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigation. The provider and provider-in-fact, if they have the ability to do so, shall make all records requested as part of investigation available for review, taking and/or copying. The provider and provider-in-fact, if they have the ability to do so, shall make available all agents and affiliates of the provider for the purpose of being interviewed during the course of the informal investigation at the provider's ordinary place of business or any other mutually agreeable location. If an original record is taken, the provider or person from whom it is taken shall be provided with a copy of that record prior to its being taken from the provider or other persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4119. Formal Investigatory Process

A. The formal investigatory process must be initiated in writing by the Director of BHSF and/or Director of Program Integrity. The written notice of investigation shall be directed to a provider, specifically name an investigating officer and be given to the provider, provider-in-fact and/or their agent. The investigating officer shall provide written notice of investigation to the provider and/or a provider-in-fact of the provider at the time of the on-site investigation.

B. The written notice need not contain any reasons or justifications for the investigation, only that such an investigation has been authorized and the individual in charge of the investigation.

C. The investigating officer and the agents of the investigating officer shall have the authority to review, take and/or copy records of the provider including, but not limited to, any financial or other business records of the provider and/or any or all records related to the recipients, and take statements from the provider, provider-in-fact, agents of the provider and any affiliates of the provider, as well as any recipients who have received goods, services, or supplies from the provider or whom the provider has claimed to have provided goods, services, and/or supplies. If an original record is taken, the provider or person from whom it is taken shall be provided with a copy of that record prior to its being taken from the provider or other persons. Statements, at the discretion of the Investigating officer, may be taken under oath either orally or in writing and may be recorded.

D. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigating officer and agents of the investigating officer, including full

nd truthful disclosure of all information requested and questions asked. The provider and provider-in-fact, if they have the ability to do so, shall make all records requested by the investigating officer available for review, taking, and/or copying. The provider and provider-in-fact, if they have the ability to do so, shall make available all agents and affiliates of the provider for the purpose of being interviewed by the investigating officer or agent of the investigating officer at the provider's ordinary place of business or any other mutually agreeable location. If an original record is taken, the provider or person from whom it is taken shall be provided with a copy of that record prior to its being taken from the provider or other persons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:442.1 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4121. Investigatory Discussion

A. During the investigatory process the provider, provider-in-fact, agent of the provider, and/or affiliate of the provider may be notified in writing of the time and place of an investigatory discussion. The notice will contain the names of the individuals who are requested to be present at the discussion and any documents that the provider, provider-in-fact, agent of the provider and/or affiliate of the provider must bring to the discussion.

B. The provider and provider-in-fact, if they have the ability to do so, shall be responsible for assuring the attendance of individuals who are currently employed by, contracted by, associated with, and/or affiliated with the provider.

C. This notice may contain a request to bring records to the investigatory discussion. If such a request for records is made, the provider and provider-in-fact are responsible for having those records produced at the investigatory discussion. The provider or provider-in-fact shall be given at least five working days to comply with the request.

D. At the investigatory discussion, the authorized investigating officer(s) can ask any of the individuals present at the discussion questions related to the provider's billing practices or other aspects directly or indirectly related to the providing of goods, supplies, and services to Medicaid recipients and/or nonrecipients, or any other aspect related to the provider's participation in the Louisiana Medicaid program. The answers, at the discretion of the investigating officer, may be recorded and/or taken under oath. Any provider, provider-in-fact, agent of the provider, affiliate of the provider, or recipient brought to an investigatory discussion has an affirmative duty to fully and truthfully answer any questions asked and provide any and all information requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4123. Written Investigatory Reports

The investigating officer or analyst, at the discretion of the Director of BHSF and/or Director of Program Integrity, may

raft a written investigative report concerning the results of the informal or formal investigation. This report shall be presented to the SURS manager. The Director of BHSF and/or Director of Program Integrity, at his discretion, may release the report to outside law enforcement agencies, authorized federal representatives, the legislative auditor and/or any individuals within the department whom the Secretary has authorized to review such reports. No other entities or persons shall have a right to review the contents of an investigative report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter D. Conduct

§4125. Introduction

Subchapter D pertains to the kinds of conduct which are violations, the scope of a violation, types of violations and elements of violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4127. Prohibited Conduct

Violations are kinds of conduct which are prohibited and constitute a violation under this regulation. No provider, provider-in-fact, agent of the provider, billing agent, affiliate of a provider or other person may engage in any conduct prohibited by this regulation. If they do, the provider and/or provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person may be subject to corrective action, withholding of payment, recoupment, recovery, suspension, exclusion, posting bond or other security, monetary penalties and/or any other sanction listed in this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4129. Violations

The following is a list of violations.

1. Failure to comply with any or all federal or state laws applicable to the Medical Assistance Program and/or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, affiliate and/or other person is participating is a violation of this provision.

a. Neither the Secretary, Director of BHSF, or any other person can waive or alter a requirement or condition established by statute.

b. Requirements or conditions imposed by a statute can only be waived, modified or changed through legislation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable laws.

d. Providers, providers-in-fact, agents of providers, billing agents, and affiliates of providers are presumed to know the law. Ignorance of the applicable laws is not a defense to any administrative action.

2. Failure to comply with any or all federal or state regulations or rule applicable to the Medical Assistance Program and/or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, and/or affiliate of the provider is participating is a violation of this provision.

a. Neither the Secretary, Director of BHSF nor any other person can waive or alter a requirement or condition established by regulation.

b. Requirements or conditions imposed by a regulation can only be waived, modified, or changed through formal promulgation of a new or amended regulation, unless authority to do so is specifically provided for in the regulation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable regulations.

d. Providers, providers-in-fact, agents of providers, and affiliates of the provider are presumed to know the regulations and rules applicable to participation in the Medical Assistance Program and/or one or more of its programs in which they are participating. Ignorance of the applicable regulations is not a defense to any administrative action.

3. Failure to comply with any or all policies, criteria and/or procedures of the Medical Assistance Program and/or the applicable program(s) of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent and/or affiliate of the provider is participating is a violation of this provision.

a. Policies, criteria and procedures are contained in program manuals, training manuals, remittance advice, provider updates and/or bulletins issued by or on behalf of the Secretary or Director of BHSF.

b. Policies, criteria and procedures can be waived, amended, clarified, repealed or otherwise changed, either generally or in specific cases, only by the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF.

c. Such waivers, amendments, clarifications, repeals, or other changes must be in writing and state that it is a waiver, amendment, clarification, or change in order to be effective.

d. Notice of the policies, criteria and procedures of the Medical Assistance Program and its programs are provided to providers upon enrollment and receipt of a provider number. It is the duty of the provider at the time of enrollment and/or re-enrollment to obtain the policies, criteria, and procedures which are in effect at the time of enrollment and/or re-enrollment.

e. Waivers, amendments, clarifications, repeals, or other changes to the policies, criteria, or procedures must be in writing and are generally contained in a new and/or reissued program manual, new manual pages, remittance advice, provider updates, and/or specifically designated bulletins from

the Secretary, Undersecretary, Deputy Secretary and/or Director of BHSF.

f. Waivers, amendments, clarifications, repeals or other changes are mailed to the provider at the address given to BHSF and/or the fiscal intermediary by the provider for the express purpose of receiving such notifications.

i. It is the duty of the provider to provide the above address and make arrangements to receive these mailings through that address. This includes the duty to inform BHSF and/or the fiscal intermediary of any changes in the above address prior to actual change of address.

ii. Mailing of a manual, new manual pages, provider update, bulletins, and/or remittance advice to the provider's latest listed above address creates a presumption that the provider received it. The burden of proving lack of notice of policy, criteria, or procedure and/or waivers, amendments, clarifications, repeals, or other changes in same is on the party asserting it.

iii. Providers and providers-in-fact are presumed to know the applicable policies, criteria and procedures and any or all waivers, amendments, clarifications, repeals, or other changes to the applicable rules, policies, criteria and procedures.

iv. Ignorance of an applicable policy, criteria, or procedure and/or any and all waivers, amendments, clarifications, repeals, and/or other changes to applicable policies, criteria and procedures is not a defense to an administrative action brought against a provider and/or provider-in-fact. Lack of notice of a policy, criteria, or procedure or waiver, amendment, clarification, repeal, or other change of the same is a defense to a violation based on abusive, fraudulent, false, or fictitious billing practice or willful practices or the imposition of any sanction except issuing a warning, education and training, prior authorization, posting bond or other security, recovery of overpayment or recoupment of overpayment. Lack of notice of a policy, criteria, or procedure and/or waivers, amendments, clarifications, repeals, and/or other changes to applicable policies, criteria, and/or procedures is not a defense to a violation which is aberrant.

g. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable policies, criteria, and procedures and any waivers, amendments, clarifications, repeals, and/or other changes in applicable policies, criteria, and/or procedures.

4. Failure to comply with one or more of the terms or conditions contained in the provider's provider agreement and/or any and all forms signed by or on behalf of the provider setting forth the terms and conditions applicable to participation in the Medical Assistance Program and/or one or more of its programs is a violation of this provision.

a. The terms or conditions of a provider agreement or those contained in the signed forms, unless specifically provided for by law or regulation or rule, can only be waived, changed and/or amended through mutual written agreement between the provider and the Secretary, Undersecretary, Deputy Secretary and/or the Director of BHSF. Those

conditions or terms which are established by law or regulation or rule may not be waived, altered, amended, or otherwise changed except through legislation or rule making.

b. A waiver, change, or amendment to a term or condition of a provider agreement and any signed forms must be reduced to writing and be signed by the provider and the Secretary, Undersecretary, Deputy Secretary and/or the Director of BHSF in order to be effective.

c. Such mutual agreements cannot waive, change and/or amend the law, regulations, rules, policies, criteria and/or procedures.

d. The provider and provider-in-fact are presumed to know the terms and conditions in their provider agreement and any signed forms related thereto and any changes to their provider agreement or the signed forms related thereto.

e. The provider and provider-in-fact are required and have an affirmative duty to fully inform all their agents and/or affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the terms and conditions contained in the provider agreement and the signed forms related thereto and any change made to them. Ignorance of the terms and conditions in the provider agreement and/or signed forms or any changes to them is not a defense.

NOTE: The Department, BHSF and/or the fiscal intermediary may, from time to time, provide training sessions and consultation on the law, regulations, rules, policies, criteria, and procedures applicable to the Medical Assistance Program and its programs. These training sessions and consultations are intended to assist the provider, provider-in-fact, agents of providers, billing agents, and affiliates. Information presented during these training sessions and consultations do not necessarily constitute the official stands of the department and BHSF in regards to the law, regulations and rules, policies, and/or procedures unless reduced to writing in compliance with Subpart D.

5. Making a false, fictitious, untrue, misleading statement or concealment of information during the application process and/or not fully disclosing all information required and/or requested on the application forms for the Medicaid Assistance Program, provider number, enrollment paperwork, and/or any other forms required by the department, BHSF and/or its fiscal intermediary that is related to enrollment in the Medical Assistance Program or one of its programs or failing to disclose any other information which is required under this regulation, and/or other departmental regulations, rules, policies, criteria, or procedures is a violation of this provision. This includes the information required under R.S. 46:437.11 - 437.14. Failure to pay any fees or post security related to enrollment is also a violation of §4129.

a. The provider and provider-in-fact have an affirmative duty to inform BHSF in writing through provider enrollment of any and all changes in ownership, control, or management of a provider and fully and completely disclose any and all administrative sanctions, withholding of payments, criminal charges, and/or convictions, guilty pleas, or no contest pleas, civil judgments, civil fines, or penalties concerning the provider, provider-in-fact, agent of the provider, billing agent, and/or affiliates of the provider which are related to Medicare or Medicaid in this or any other state or territory of the United States.

b. Failure to do so within ten working days of when

he provider or provider-in-fact knew or should have known of such a change or information is a violation of this provision.

c. If it is determined that a failure to disclose was willful or fraudulent, the provider's enrollment can be voided back to the date of the willful misrepresentation or concealment or fraudulent disclosure.

6. Not being properly licensed, certified, or otherwise qualified to provide for the particular goods, services, or supplies provided and/or billed for and/or such license, certificate, or other qualification required or necessary in order to provide a good, service, or supply has not been renewed or has been revoked, suspended or otherwise terminated is a violation of this provision. This includes, but is not limited to, professional licenses, business licenses, paraprofessional certificates, and licenses or other similar licenses or certificates required by federal, state, or local governmental agencies, as well as professional or paraprofessional organizations and/or governing bodies which are required by the Medical Assistance Program. Failure to pay required fees related to licensure or certification is also a violation of this provision.

7. Having engaged in conduct or performing an act in violation of official sanction which has been applied by a licensing authority, professional peer group, or peer review board or organization, or continuing such conduct following notification by the licensing or reviewing body that said conduct should cease is a violation of this provision.

8. Having been excluded or suspended from participation in Medicare is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded or suspended from Medicare during the period of exclusion or suspension.

a. The provider and provider-in-fact have an affirmative duty to:

i. inform BHSF in writing of any such exclusions or suspensions on the part of the provider, provider-in-fact and/or their agents and/or billing agents and/or their affiliates;

ii. not hire, associate with, contract with and/or affiliate with any person or entity who has been excluded or suspended from Medicare; and

iii. terminate any and all formal relationships with any person or entity who has been excluded or suspended from Medicare.

b. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact or their agents, and/or affiliates is a violation of §4129.A.5.

c. If the terms of the exclusion or suspension have been completed, no violation of this provisions has occurred.

9. Having been excluded, suspended, and/or otherwise terminated from participation in Medicaid or other publicly funded health care or insurance programs of this state or any other state or territory of the United States is a violation of this provision. It is also a violation of §4129 for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded, suspended and/or otherwise

erminated from participation in Medicaid or other publicly funded health care or health insurance programs of this state or another state or territory of the United States. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded from Medicaid or other publicly funded health care or health insurance programs of this state or any other state or territory of the United States during the period of exclusion or suspension.

a. The provider and provider-in-fact have an affirmative duty to:

i. inform BHSF of any such exclusions or suspensions on the part of the provider, provider-in-fact, and/or their agents and/or their affiliates;

ii. not hire, associate with, contract with, and/or affiliate with any person or entity who has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs; and

iii. terminate any and all formal relationships with any person or entity who has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs.

b. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, or their agents and/or affiliates is a violation of §4129.A.5.

c. If the terms of the exclusion or suspension have been completed, no violation of this provision has occurred.

10. Having been convicted of, pled guilty, or pled no contest to a crime, including attempts or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies and/or billing for goods, services, and/or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds is a violation of this provision. It is also a violation for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest to a crime, including attempts to or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies and/or billing for goods, services, and/or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds.

a. The provider and provider-in-fact have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilt pled, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, and/or their agents and/or affiliates;

ii. not hire, associate with, contract with, and/or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct; and

iii. terminate any and all formal relationships with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider

r provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, or their agents and/or affiliates is a violation of §4129.A.5.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three year period, this provision is not violated. Criminal conduct which has been pardoned does not violate this provision.

11. Having been convicted of, pled guilty to, or pled no contest to in a Louisiana court to Medicaid Fraud (LSA-R.S. 14:70.1) or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Medical Assistance Program is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest in a Louisiana court to Medicaid Fraud (LSA-R.S. 14:70.1) or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Louisiana Medicaid program.

a. The provider and provider-in-fact have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, and/or their agents and/or affiliates;

ii. not hire, associate with, contract with, and/or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all formal relationships with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct.

b. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, or their agents and/or affiliates is a violation of §4129.A.5.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three-year period, this provision is not violated. Criminal conduct which has been pardoned does not violate this provision.

12. Having been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an activity or skill performed by or billed by that person or entity under the Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an activity or skill performed by or billed by that person or entity under

he Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care.

a. The provider and provider-in-fact have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, and/or their agents and/or affiliates;

ii. not hire, associate with, contract with, and/or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all formal relationships with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, or their agents and/or affiliates is a violation of §4129.A.5.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three-year period, this provision is not violated. Criminal conduct which has been pardoned does not violate this provision.

13. Having been convicted of, pled guilty, or pled no contest to Medicaid, Medicare or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients and/or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, plead guilty, or plead no contest to Medicaid, Medicare, or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud, or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients and/or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States.

a. The provider and provider-in-fact have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, and/or their agents and/or affiliates;

ii. not hire, associate with, contract with, and/or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct; and

iii. terminate any and all formal relationships with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, or their agents and/or affiliates is a violation of §4129.A.5.

c. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three-year period, this provision is not violated. Criminal conduct which has been pardoned does not violate this provision.

14. Having been convicted of, pled guilty to, or pled no contest to in any federal court, state court, or court in any territory of the United States to any of the following criminal conduct, attempt to commit or conspiracy to commit any of the following crimes are violations of this provision:

a. bribery or extortion;

b. sale, distribution, or importation of a substance or item which is prohibited by law;

c. tax evasion or fraud;

d. money laundering;

e. securities or exchange fraud;

f. wire and/or mail fraud;

g. violence against a person;

h. act against the aged, juveniles or infirmed;

i. any crime involving public funds; or

j. other similar criminal conduct.

i. The provider and provider-in-fact have an affirmative duty to:

(a). inform BHSF of any such criminal charges, convictions, and/or pleas on the part of the provider, provider-in-fact, and/or their agents, and/or their affiliates;

(b). not hire, associate with, contract with, and/or affiliate with any person or entity who has engaged in such criminal misconduct; and

(c). terminate any and all formal relationships with any person or entity who has engaged any such criminal misconduct.

ii. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, or their agents and/or their affiliates is a violation of §4129.A.5.

iii. If three years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three-year period, this provision is not violated. Criminal conduct which has been pardoned does not violate this provision.

15. Being found in violation of or entering into a settlement agreement under this state's Medical Assistance Program Integrity Law, the Federal False Claims Act, Federal Civil Monetary Penalties Act, or any other similar civil statutes in this state, in any other state, United States or United States territory is a violation of this provision.

a. Relating to violations of this provision, the provider and provider-in-fact have an affirmative duty to:

i. inform BHSF of any violations of this provision on the part of the provider, provider-in-fact and/or their agents and/or their affiliates;

ii. not hire, associate with, contract with and/or affiliate with any person or entity who has violated this provision; and

iii. terminate any and all formal relationships with any person or entity who has violated this provision.

b. Failure to do so on the part of the provider and/or provider-in-fact within ten working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact or their agents and/or their affiliates is a violation of §4129.A.5.

c. If a False Claims Act action or other similar civil action is brought by a Qui-Tam plaintiff or under a little attorney general or other similar provision, no violation of this provision has occurred unless and until the governmental authority authorized to bring or intervene in the action has done so or the defendant has been found liable in the action.

d. If three years have passed from the time a person is found liable or entered a settlement agreement under the False Claims Act or other similar civil statute and the conditions of the judgement or settlement have been satisfactorily fulfilled, no violation has occurred under this provision.

16. Failure to correct the deficiencies or problem areas listed in a notice of corrective action and/or failure to meet the provisions of a corrective action plan and/or failure to correct deficiencies in delivery of goods, services, or supplies or deficiencies in billing practices or record keeping after receiving written notice to do so from the Secretary, Director of BHSF and/or Director of Program Integrity is a violation of this provision.

17. Having presented, causing to be presented, attempting to present, or conspiring to present false, fraudulent, fictitious, and/or misleading claims or billings for payment and/or reimbursement to the Medical Assistance Program through BHSF and/or its authorized fiscal intermediary for goods, services, and/or supplies, or in documents related to a cost report or other similar submission is a violation of this provision.

18. Engaging in the practice of charging and/or accepting payments, in whole or in part, from one or more recipients for goods, services, and/or supplies for which the provider has made or will make a claim for payment to the Louisiana Medicaid program is a violation of this provision, unless this prohibition has been specifically excluded within the program under which the claim was submitted or will be made or the payment by the recipient is an authorized copayment or is otherwise specifically authorized by law or regulation. Having engaged in practices prohibited by R.S. 46:438.2 and/or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

19. Having rebated or accepted a fee or a portion of a fee and/or anything of value for a Medicaid recipient referral is a violation of this provision, unless this prohibition has been

specifically excluded within the program or is otherwise authorized by statute and/or regulation, rule, policy, criteria and/or procedure of the department through BHSF. Having engaged in practices prohibited by R.S. 46:438.2 and/or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

20. Paying to another a fee in cash or kind for the purpose of obtaining recipient lists or recipients names is a violation of this provision, unless this prohibition has been specifically excluded within the program or is otherwise authorized by statute and/or regulation, rule, policy, criteria and/or procedure of the department through BHSF. Using or possessing any recipient list or information which was obtained through unauthorized means or using such in an unauthorized manner is also a violation of this provision. Having engaged in practices prohibited by R.S. 46:438.2 or R.S. 46:438.4 and/or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

21. Failure to repay or make arrangements to repay an identified overpayment or otherwise erroneous payment within ten working days after written notice of same is mailed to the provider and/or provider-in-fact is a violation of this provision. Failure to pay any and all administrative and/or court ordered restitution, civil money damages, criminal or civil fines, monetary penalties and/or costs or expenses is also a violation of this provision. Failure to pay any assessed provider fee and/or payment is also a violation of this provision.

22. Failure to keep or make available for inspection, audit, or copying records related to the Louisiana Medicaid program and/or one or more of its programs for which the provider has been enrolled and/or issued a provider number or has failed to allow BHSF or its fiscal intermediary and/or any other duly authorized governmental entity an opportunity to inspect, audit, and/or copy those records is a violation of this provision. Failure to keep records required by Medicaid or one of its programs until payment review has been conducted is also a violation of this provision;

23. Failure to furnish and/or arrange to furnish information or documents to BHSF within five working days after receiving a written request to provide that information to BHSF or its fiscal intermediary is a violation of this provision.

24. Failure to fully cooperate with BHSF, its fiscal intermediary and/or the investigating officer during the postpayment or prepayment process, investigative process, an investigatory discussion, informal hearing and/or the administrative appeal process or any other legal process or making, or caused to be made, a false or misleading statement of a material fact in connection with the postpayment or prepayment process, corrective action, investigation process, investigatory discussion, informal hearing and/or the administrative appeals process or any other legal process is a violation of this provision.

25. Making, or causing to be made, a false, fictitious or misleading statement or making, or caused to be made, a false, fictitious or misleading statement of a fact in connection with the administration of the Medical Assistance Program is a violation of this provision. This includes, but is not limited to, the following:

a. claiming costs for noncovered or nonchargeable services, supplies, or goods disguised as covered items;

b. billing for services, supplies, or goods which are not rendered to person(s) who are eligible to receive the services, supplies, or goods;

c. misrepresenting dates and descriptions and the identity of the person(s) who rendered the services, supplies, or goods;

d. duplicate billing;

e. upcoding of services, supplies, or goods provided;

f. misrepresenting a recipient's need or eligibility to receive services, goods, or supplies or the recipient's eligibility for a program;

g. improperly unbundling goods, services, or supplies for billing purposes;

h. misrepresenting the quality or quantity of services, goods, or supplies;

i. submitting claims for payment for goods, services, and supplies provided to nonrecipients if the provider knew or should have known that the individual was not eligible to receive the good, supply, or service at the time the good, service, or supply was provided and/or billed for;

j. furnishing and/or causing to be furnished goods, services, or supplies to a recipient which:

i. are in excess of the recipient's needs;

ii. were or could be harmful to the recipient;

iii. serve no real medical purpose;

iv. are of grossly inadequate or inferior quality;

v. were furnished by an individual who was not qualified under the applicable Louisiana Medicaid program to provide the good, service, or supply;

vi. the good, service, or supply was not furnished under the required programmatic authorization; or

vii. the goods, services or supplies provided were not provided in compliance with the appropriate licensing or certification board's regulations, rules, policies or procedures governing the conduct of the person who provided the goods, services or supplies;

k. providing goods, services, or supplies in a manner or form which is not within the normal scope and range of the standards used within the applicable profession;

l. billing for goods, services, or supplies in a manner inconsistent with the standards established in relevant billing codes or practices.

26. In the case of a managed care provider or provider operating under a voucher, notwithstanding any contractual agreements to the contrary, failure to provide all medically necessary goods, services, and/or supplies of which the recipient is in need and entitled to is a violation of this provision.

27. Submitting bills or claims for payment or reimbursement to the Louisiana Medicaid program through BHSF and/or its fiscal intermediary on behalf of a person or entity which is serving out a period of suspension or exclusion from participation in the Medical Assistance Program or one of its programs, Medicare, Medicaid, publicly funded health care and/or publicly funded health insurance program in any other state or territory of the United States or the United States is a violation of this provision except for bona fide emergency

services provided during a bona fide medical emergency.

28. Engaging in a systematic billing practice which is abusive or fraudulent and which maximizes the costs to the Louisiana Medicaid program after written notice to cease such billing practice(s) is a violation of this provision.

29. Failure to meet the terms of an agreement to repay or settlement agreement entered into under this state's Medical Assistance Program Integrity Law or this regulation is a violation of this provision.

30. If the provider, a person with management responsibility for a provider, an officer or person owning, either directly or indirectly, any shares of stock or other evidence of ownership in a corporate provider, an owner of a sole proprietorship which is a provider, or a partner in a partnership which is a provider, is found to fall into one or more of the following categories.

a. The provider was previously terminated from participation in the Louisiana Medicaid program or one or more of its programs and:

i. was a person with management responsibility for a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or

ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or

iii. was an owner of a sole proprietorship or a partner of a partnership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs.

b. The provider has engaged in practices prohibited by federal or state law or regulation and:

i. was a person with management responsibility for a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or

ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or

iii. was an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices prohibited by federal or state law or regulation.

c. The provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law and:

i. was a person with management responsibility for a provider during the time the provider engaged in practices for which the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

ii. was an officer or person owning, directly or indirectly, any of the shares of stock or other evidence of ownership in a provider during the time the provider engaged

n practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

iii. was an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law.

31. If the provider or provider-in-fact is terminated or suspended for cause from any health care or health insurance program, it is a violation of this provision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4131. Scope of a Violation

A. Violations may be imputed in the following manner.

1. The conduct of a provider-in-fact is always attributable to the provider. The conduct of a managing employee is always attributable to the provider and provider-in-fact.

2. The conduct of an agent of the provider, billing agent, and/or affiliate of the provider may be imputed to the provider and/or provider-in-fact if the conduct was performed within the course of his duties for the provider or was effectuated by him with the knowledge or approval of the provider or provider-in-fact.

3. The conduct of any person or entity operating on behalf of a provider may be imputed to the provider and/or provider-in-fact.

4. The provider and provider-in-fact are responsible for the conduct of any and all officers, employees or agents of the provider including any with whom the provider has a contract to provide managerial or administrative functions for the provider or to provide goods, services, or supplies on behalf of the provider. The conduct of these persons or entities may be imputed to the provider and/or provider-in-fact.

5. A violation under one Medicaid Number may be extended to any and all Medicaid Numbers held by the provider or provider-in-fact or which may be obtained by the provider and/or provider-in-fact.

6. Recoupments or recoveries may be made from any payments or reimbursement made under any and all provider numbers held by or obtained by the provider and/or provider-in-fact.

7. Any sanctions, including recovery or recoupment, imposed on a provider and/or provider-in-fact shall remain in effect until its terms have been satisfied. Any person or entity who purchases, merges or otherwise consolidates with a provider or employs or affiliates a provider-in-fact, agent of the provider or affiliate of a provider who has had sanctions imposed on it under this regulation assumes liability for those sanctions, if the person or entity knew or should have known about the existence of the sanctions, and may be subject to additional sanctions based on the purchase, merger, consolidation, affiliation or employment of the sanctioned provider or provider-in-fact.

8. A provider and/or provider-in-fact who refers a recipient to another for the purpose of providing a good, service, or supply to a recipient may be held responsible for any or all overbilling by the person to whom the recipient was referred; provided the referring provider or person knew or should have known that such overbilling was likely to occur.

9. Providers which are legal entities, i.e., clinics, corporations, HMOs, PPOs, etc., may be held jointly liable for the repayment or recoupment of any person within that legal entity.

10. Withholdings imposed on a provider may be extended to any or all provider numbers held or obtained by that provider and/or any provider-in-fact of that provider.

B. Any attributing, imputing, extension or imposing under this provision shall be done on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4133. Types of Violation

Violations can be of four different types: aberrant; abusive; willful; or fraudulent. Section 4133.A defines these four different types of violations.

Aberrant Practice—any practice that is inconsistent with the laws, regulations, rules, policies, criteria and/or practices and/or the terms in the provider agreement and/or signed forms related to the provider agreement and is applicable to the Louisiana Medicaid program and/or one or more of its programs in which the provider is enrolled or was enrolled at the time of the alleged occurrence.

Abusive Practice—any practice of which the provider has been informed in writing by the Secretary, Director of BHSF, and/or Director of Program is aberrant, and the provider, provider-in-fact, agent of the provider, and/or an affiliate of the provider continues to engage in that practice after the written notice to discontinue such a practice has been provided to the provider and/or provider-in-fact.

Fraudulent Practice—a deception or misrepresentation made by a person who had knowledge that the deception or misrepresentation was false, untrue, and/or wrong or failed to take reasonable steps to determine the truthfulness or correctness of information, and the deception or misrepresentation did or could have resulted in payment of one or more claims for which payment should not have been made or payment on one or more claims which would or could be greater than the amount entitled to. This includes any act or attempted act that could constitute fraud under either criminal or civil standards under applicable federal or Louisiana law.

Willful Practice—a deception or misrepresentation made by a person who knew, or should have known, that the deception or misrepresentation was false, untrue, misleading, and/or wrong or an aberrant or abusive practice which is so pervasive as to indicate that the practice was willful. A willful practice also includes conduct which would be in violation of this state's Medical Assistance Program Integrity Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4135. Elements

A. Each type of violation contains different elements which must be established.

1. A finding of an aberrant practice does not require proof of knowledge, intent, or overpayment or attempted overpayment.

2. A finding of an abusive practice requires notice of the aberrant practice and its continued existence following that notice, but does not require proof of intent or overpayment or attempted overpayment.

3. A finding of willful practice requires that the person knew or should have known of the deception or misrepresentation, but does not require proof of intent or overpayment or attempted overpayment.

4. A finding of fraudulent practice requires knowledge, intent and overpayment or attempted overpayment.

B. Providers, providers-in-fact, agents of the provider, affiliates of the provider and other persons may be found to have engaged in the same prohibited conduct but committed different types of violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter E. Administrative Sanctions, Procedures and Processes

§4137. Sanctions for Prohibited Conduct

Any or all of the following sanctions may be imposed for any one or more of the above listed kinds of prohibited conduct, except as provided for in this regulation.

1. Issue a warning to a provider and/or provider-in-fact or other person through written notice and/or consultation.

2. Require that the provider and/or provider-in-fact, their affiliates, and agents receive education and training in laws, regulations, rules, policies, criteria and procedures, including billing, at the provider's expense.

3. Require that the provider and/or provider-in-fact receive prior authorization for any or all goods, services and/or supplies under the Louisiana Medicaid program and/or one or more of its programs.

4. Require that some or all of the provider's claims be subject to manual review.

5. Require a provider and/or provider-in-fact to post a bond or other security or increase the bond or other security already posted as a condition of continued enrollment in the Louisiana Medicaid program and/or one or more of its programs.

6. Require that a provider terminate its association with a provider-in-fact, agent of the provider, and/or affiliate as a condition of continued enrollment in the Louisiana Medicaid program and/or one or more of its programs.

7. Prohibit a provider from associating, employing and/or contracting with a specific person and/or entity as a condition of continued participation in the Louisiana Medicaid program and/or one or more of its programs.

8. Prohibit a provider, provider-in-fact, agent of the

provider, billing agent or affiliate of the provider from performing specified tasks and/or providing goods, services, or supplies at designated locations or to designated recipients and/or classes or types of recipients.

9. Prohibit a provider, provider-in-fact, and/or agent from referring recipients to another designated person and/or purchasing goods, services, or supplies from designated persons.

10. Recoupment.

11. Recovery.

12. Impose judicial interest on any outstanding recovery or recoupment.

13. Impose reasonable costs and expenses incurred as the direct result of the investigation and/or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employee or agent.

14. Exclusion from the Louisiana Medicaid program and/or one or more of its programs.

15. Suspension from the Louisiana Medicaid program and/or one or more of its programs pending the resolution of the department's administrative appeals process.

16. Impose a bond or other form of security as a condition of continued participation in the Medical Assistance Program.

17. Require the forfeiture of a bond or other security.

18. Impose an arrangement to repay.

19. Impose monetary penalties not to exceed \$10,000 per violation.

20. Impose withholding of payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4139. Scope of Sanctions

A. Sanction(s) imposed can be extended to other persons and/or entities and to other provider numbers held or obtained by the provider in the following manner.

1. Sanction(s) imposed on a provider or provider-in-fact may be extended to a provider and/or provider-in-fact.

2. Sanction(s) imposed on an agent of the provider and/or affiliate of the provider may be imposed on the provider and/or provider-in-fact if it can be shown that the provider and/or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner.

3. Sanction(s) imposed on a provider or provider-in-fact arising out of goods, services, and/or supplies to a referred recipient may also be imposed on the referring provider if it can be shown that the provider and/or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner.

4. Sanction(s) imposed under one provider number may be extended to all provider numbers held by and/or which may be obtained in the future by the sanctioned provider or provider-in-fact, unless and until the terms and conditions of the sanction(s) has been fully satisfied.

5. Sanction(s) imposed on a person remains in effect unless and until its terms and conditions are fully satisfied. The

terms and conditions of the sanction(s) remain in effect in the event of the sale or transfer of ownership of the sanctioned provider.

a. The entity or person who obtains ownership interest in a sanctioned provider assumes liability and responsibility for the sanctions imposed on the purchased provider including, but not limited to, all recoupments and/or recovery of funds or arrangements to repay that the entity or person knew or should have known about.

b. An entity or person who employs or otherwise affiliates itself with a provider-in-fact who has been sanctioned assumes the liability and responsibility for the sanctions imposed on the provider-in-fact that the entity or person knew or should have known about.

c. Any entity or person who purchases an interest in, merges with or otherwise consolidates with a provider which has been sanctioned assumes the liability and responsibility for the sanction(s) imposed on the provider that the entity or person knew or should have known about.

B. Exclusion from participation in the Louisiana Medicaid program precludes any such person from submitting claims for payment, either personally or through claims submitted by any other person and/or entity, for any goods, services, and/or supplies provided by an excluded person and/or entity, except bona fide emergency services provided during a bona fide medical emergency. Any payments made to a person or entity which are prohibited by this provision shall be immediately repaid to the Medical Assistance Program through BHSF by the person and/or entity which received the payments.

C. No provider shall submit claims for payment to the department and/or its fiscal intermediary for any goods, services, and/or supplies provided by a person or entity within that provider who has been excluded from the Medical Assistance Program or one or more of its programs for goods, services, and/or supplies provided by the excluded person and/or entity under the programs which it has been excluded from except for goods, services, and/or supplies provided prior to the exclusion, except for bona fide emergency services provided during a bona fide medical emergency. Any payments made to a person or entity which are prohibited by this provision shall be immediately repaid to the Medical Assistance program through BHSF by the person and/or entity which received the payments.

D. When the provisions of §4133 B-C are violated, the person or entity which committed the violations may be sanctioned using any and all of the sanctions provided for in this rule.

E. Extending of sanctions must be done on a case-by-case basis.

F. The provisions in R.S. 46:437.10 shall apply to all sanctions and withholding imposed pursuant to this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4141. Imposition of Sanction(s)

A. The decision as to the sanction(s) to be imposed shall be at the discretion of the Secretary, Director of BHSF and/or

Director of Program Integrity except as provide for in this provision, unless the sanction is mandatory. The Secretary, Director of BHSF and/or Director of Program Integrity may impose one or more sanctions for a single violation. The imposition of one sanction does not preclude the imposition of another sanction for the same or different violations.

B. At the discretion of the Secretary, Director of BHSF and/or Director of Program each occurrence of misconduct may be considered a violation or multiple occurrences of misconduct may be considered a single violation or any combination thereof.

C. The following factors may be considered in determining the sanction(s) to be imposed:

1. seriousness of the violation(s);
2. extent of the violation(s);
3. history of prior violation(s);
4. prior imposition of sanction(s);
5. prior provision of education;
6. willingness to obey program rules;
7. whether a lesser sanction will be sufficient to remedy the problem;
8. actions taken or recommended by peer review groups or licensing boards;
9. cooperation related to reviews or investigations by the department and/or cooperation with other investigatory agencies; and
10. willingness and ability to repay identified overpayments.

D. Notwithstanding §4141.A of this provision, sanctions of judicial interest, costs and expenses and monetary penalties shall be imposed only after a determination that the violation is abusive, willful or fraudulent unless it is shown that the denial of the violation is frivolous or without merit, in which case interest and/or costs may be imposed regardless of the type of violation involved.

E. Notwithstanding §4141.A of this Provision, a monetary penalty may be imposed only after a finding that the violation involved a willful practice or fraudulent practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4143. Mandatory Sanctions

A. Mandatory Exclusion from the Medical Assistance Program. Notwithstanding any other provision to the contrary, the Secretary, Director of BHSF, and/or Director of Program Integrity has no discretion and must exclude the provider, provider-in-fact or other person from the Medical Assistance Program if the violation involves one or more of the following:

1. a conviction, guilty plea, or no contest plea to a criminal offense(s) in federal and/or Louisiana state court related, either directly or indirectly, to participation in either Medicaid or Medicare;
2. has been excluded from Louisiana Medicaid and/or Medicare; or
3. has failed to meet the terms and conditions of a Repayment Agreement, settlement or judgment entered into under this state's Medical Assistance Program Integrity Law.

a. In these situations the exclusion from the Medical Assistance Program is automatic and can be longer than, but not shorter in time than, the sentence imposed in criminal court, the exclusion from Medicaid or Medicare and/or time provided to make payment.

b. The exclusion is retroactive to the time of the conviction, plea, exclusion, the date the repayment agreement was entered by the department and/or the settlement or judgment was entered under this state's Medical Assistance Program Integrity Law.

c. Proof of the conviction, plea, exclusion, failure to meet the terms and conditions of a repayment agreement, or settlement or judgment entered under this state's Medical Assistance Program Integrity Law can be made through certified and/or true copies of the conviction, plea, exclusion, agreement to repay, settlement, or judgment or via affidavit.

i. If the conviction is overturned, plea set aside, or exclusion or judgment are reversed on appeal, the mandatory exclusion from the Medical Assistance Program shall be removed.

ii. The person and/or entity which is excluded from the Medical Assistance Program under §4143.A is entitled to an administrative appeal of a mandatory exclusion.

iii. The facts and law surrounding the criminal matter, exclusion, repayment agreement or judgment which serves as the basis for the mandatory exclusion from the Medical Assistance Program cannot be collaterally attacked at the administrative appeal.

B. Mandatory Arrangements to Pay, Recoupment or Recovery. If the violation(s) was fraudulent or willful and resulted in an identified overpayment, the Secretary, Director of BHSF, and/or Director of Program Integrity manager has no discretion. The person or entity must have imposed on them an arrangement to repay, recoupment and/or recovery of the identified overpayment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4145. Effective Date of a Sanction

All sanctions, except exclusion, are effective upon the issuing of the notice of the results of the informal hearing. The filing of a timely and adequate notice of administrative appeal does not suspend the imposition of a sanction(s), except that of exclusion. In the case of the imposition of exclusion from the Louisiana Medicaid program and/or one or more of its programs, the filing of a timely and adequate notice of appeal suspends the imposition of the sanction. In the case of an exclusion, the Secretary, Director of BHSF, and/or Director of Program Integrity may impose a suspension from the Medical Assistance Program and/or one or more of its programs during the pendency of an administrative appeal. A sanction becomes a final administrative adjudication if no administrative appeal has been filed, and the time for filing an administrative appeal has run. Or in the case of a timely filed notice of administrative appeal, a sanction(s) becomes a final administrative adjudication when the order on appeal has been entered by the Secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter F. Withholding

§4147. Withholding of Payments

A. If, during the course of claims review, the Director of BHSF, and/or the Director of Program Integrity has a reasonable expectation that an overpayment to a provider may have occurred or may occur, that a provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation, or has information that fraudulent, willful or abusive practices may have been used, or that willful misrepresentations may have occurred, the Director of BHSF and/or the Director of Program Integrity may initiate the withholding of payments to a provider for the purpose of protecting the interest and fiscal integrity of the Louisiana Medicaid program.

B. Basis for Withholding. The Director of BHSF and/or the Director of Program Integrity may withhold a portion of or all payments or reimbursements to be made to a provider upon receipt of information that overpayments have been made to a provider, that the provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation, that fraudulent, willful or abusive practices may have occurred or that willful misrepresentation has occurred. If the Director of BHSF and/or the Director of Program Integrity has been informed in writing by a prosecuting authority that a provider and/or provider-in-fact has been formally charged or indicted for crimes or is being investigated for potential criminal activities which relate to the Louisiana Medicaid program or one or more of its programs and/or Medicare, payments to that provider may be withheld. If the Director of BHSF and/or the Director of Program Integrity has been informed in writing by any governmental agency or authorized agent of a governmental agency that a provider or a provider-in-fact is being investigated by that governmental agency or its authorized agent for billing practices related to any government funded health care program, payment may be withheld. Withholding of payments may occur without first notifying the provider.

C. Notice of Withholding

1. The provider shall be sent written notice of the withholding of payments within five working days of the actual withholding of the first check which is subject of the withholding. The notice shall set forth in general terms the reason(s) for the action, but need not disclose any specific information concerning any ongoing investigations nor the source of the allegations. The notice must:

a. state that payments are being withheld;

b. state that the withholding is for a temporary period and cite the circumstances under which the withholding will be terminated;

c. specify to which type of Medicaid claims withholding is effective;

d. inform the provider of its right to submit written documentation for consideration and to whom to submit that documentation.

2. Failure to provide timely notice of the withholding to the provider or provider-in-fact may be grounds for dismissing or overturning the withholding, except in cases involving written notification from outside governmental authorities, abusive practice, willful practices or fraudulent practices.

D. Duration of Withholding

1. All withholding of payment actions under §4147.D will be temporary and will not continue after:

a. the Director of BHSF and/or the Director of Program Integrity has determined that insufficient information exists to warrant the withholding of payments;

b. recoupment and/or recovery of overpayments has been imposed on the provider;

c. the provider or provider-in-fact has posted a bond or other security deemed adequate to cover all past and future projected overpayments by the Director of BHSF and/or the Director of Program Integrity;

d. the notice of the results of the informal hearing.

2. In no case shall withholding remain in effect past the issuance of the notice of the results of the informal hearing, unless the withholding is based on written notification by an outside agency that an active and ongoing criminal investigation is being conducted or that formal criminal charges have been brought. In that case, the withholding may continue for as long as the criminal investigation is active and ongoing and/or the criminal charges are still pending, unless adequate bond or other security has been posted with BHSF.

E. Amount of the Withholding

1. If the withholding of payment results from projected overpayments which The Director of BHSF and/or the Director of Program Integrity determines not to be related to fraudulent, willful or abusive practices, obstruction or delay in investigation or based on written notification from an outside agency, then when determining the amount to be withheld, the ability of the provider to continue operations and the needs of the recipient serviced by the provider shall be taken into consideration by the Director of BHSF and/or the Director of Program Integrity. In the event that a recipient cannot receive needed goods, services or supplies from another source arrangements shall be made to assure that the recipient can receive goods, supplies, and services. The burden is on the provider to demonstrate that absent that provider's ability to provide goods, supplies, or services to that recipient, the recipient could not receive needed good, supplies, or services. Such showing must be made at the Informal Hearing.

2. The amount of the withholding shall be determined by the Director of BHSF and/or the Director of Program Integrity. The provider should be notified of the amount withheld every 60 days from the date of the issuing of the Notice of Withholding until the withholding is terminated or the Results of the Informal Hearing is issued, whichever comes first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

4149. Effect of Withholding on the Status of a Provider or Provider-in-Fact with the Medical Assistance Program

Withholding of payments does not, in and of its self, affect the status of a provider or provider-in-fact. During the period of withholding, the provider may continue to provide goods, services, or supplies and continue to submit claims for them, unless the provider has been suspended or excluded from participation. Any and all amounts withheld or bonds or other security posted may be used for recovery, recoupment or arrangements to pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter H. Arrangements to Repay

§4151. Arrangement to Repay

A. Arrangements to repay may be mutually agreed to or imposed as a sanction on a provider, provider-in-fact, agent of the provider, and/or affiliate of the provider. Arrangements to repay identified overpayments, interest, monetary penalties and/or costs and expenses should be made through a lump sum single payment within 60 days of reaching or imposing the arrangement to repay. However, an agreement to repay may contain installment terms and conditions. In such cases, the repayment period cannot extend past two years from the date the agreement is reached or imposed, except that a longer period can be established by the Secretary. In such a case the agreement to repay must be signed by the Secretary.

B. All agreements to repay must contain at least:

1. the amount to be repaid;
2. the person(s) responsible for making the repayments;
3. a specific time table for making the repayment;
4. if installment payments are involved, the date upon which each installment payment is to be made; and
5. the security posted to assure that the repayments will be made, and if not made, the method through which the security can be seized and converted by Medicaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter I. Corrective Actions

§4153. Corrective Actions Plans

The following procedures are established for the purpose of attempting to resolve problems prior to the issuing of a notice of sanction and/or for resolution during the informal hearing and/or administrative hearing.

1. Corrective Action Plan—Notification

a. The Director of BHSF, and/or the Director of Program Integrity may at anytime issue a notice of corrective action to a provider or provider-in-fact, agent of the provider, and/or affiliate of the provider. The provider, provider-in-fact, agent of the provider, and/or affiliate of the provider shall either comply with the corrective action plan within ten working days or request an informal hearing. The purpose of a Corrective Action Plan is to identify potential problem areas

and correct them before they become significant discrepancies, deviations or violations. This is an informal process.

i. The request for an informal hearing must be made in writing.

ii. If the provider, provider-in-fact, agent of the provider, and/or affiliate of the provider opts to comply, it must do so in writing, signed by the provider, provider-in-fact, agent of the provider, and/or affiliate of the provider.

b. Corrective action plans are also used to resolve matters at or before the informal hearing or administrative appeal process. When so used they serve the same function as a settlement agreement.

2. Corrective Action Plan—Inclusive Criteria. The corrective action plan must be in writing and contain at least the following:

a. the nature of the discrepancies and/or violations;

b. the corrective action(s) that must be taken;

c. notification of any action required of the provider, provider-in-fact, agent of the provider, billing agent and/or affiliate of the provider;

d. notification of the right to an informal hearing on any or all of the corrective actions which the provider, provider-in-fact, agent of the provider, and/or affiliate of the provider is not willing to comply with within ten working days of the date of the notice; and

e. the name, address, telephone and facsimile number of the individual to contact in regards to compliance and/or requesting an informal hearing.

3. Corrective Action Plans—Restrictions. Corrective actions which may be included in a corrective action plan are the following:

a. issuing a warning through written notice and/or consultation;

b. require that the provider, provider-in-fact, agent of the provider, and/or affiliate receive education and training in the law, regulations, rules, policies, criteria and procedures related to the Medical Assistance Program, including billing practices and/or programmatic requirements and practices. Such education and/or training may be at the provider or provider-in-fact's expense.

c. require that the provider receive prior authorization for any or all goods, services, and/or supplies to be rendered;

d. place the provider's claims on manual review status before payment is made;

e. restrict or remove the provider's privilege to submit bills or claims electronically;

f. impose any restrictions deemed appropriate by the Director of BHSF and/or the Director of Program Integrity; or

g. any other items mutually agreed to by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person and the Director of BHSF and/or the Director of Program Integrity, including, but not limited to, one or more of the sanctions listed in this regulation and an agreement to repay.

4. Only restrictions in §4153.A.3.a.-f can be imposed on a provider, provider-in-fact, agent of the provider, billing agent, and/or affiliate of the provider without their agreement. Any other items included in a corrective action plan must be

mutually agreed to among the parties to the corrective action plan.

5. A corrective action plan is effective twenty days after the date of mailing and/or faxing to the provider, provider-in-fact, agent of the provider, and/or affiliate of the provider.

6. No right to an informal hearing or administrative appeal can arise from a corrective action plan, unless the corrective action plan violates the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter J. Informal Hearing Procedures and Processes

§4155. The Informal Hearing

A. A provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person who has received notice of a corrective action(s) which that person does not agree with and has timely made a request for an informal hearing, and/or notice of administrative sanction or withholding of payment shall be provided with the opportunity to be heard at an informal hearing. The time and place for the informal hearing will be set out in the notice of setting of the informal hearing.

B. The informal hearing is designed to provide the opportunity:

1. to provide the provider, provider-in-fact, agent of the provider, billing agent, the affiliate of the provider and/or other person an opportunity to informally review the situation;

2. for the agency to offer alternatives based on information presented by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider, and/or other person, if any; and

3. for the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person to evaluate the necessity for seeking an administrative appeal. During the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person may be afforded the opportunity to talk with the department's personnel involved in the situation, to review pertinent documents on which the alleged violations are based, to ask questions, to seek clarification, and to provide additional information. At the option of the Director of Program Integrity and/or the SURS Manager an informal hearing may be recorded.

C. Notice of the Results of the Informal Hearing

1. Following the informal hearing, BHSF shall inform the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person in writing of the results which could range from canceling, modifying, or upholding the action in the notification and the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person's right to an administrative appeal.

2. The provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person has the right to request an administrative appeal within thirty days of the mailing of the notice of the results of the informal

earing. At any time prior to the issuance of the written results of the informal hearing, the notice of corrective action or notice of administrative sanction or withholding of payment may be modified.

a. If a finding or reason is dropped from the notice, no additional time will be granted to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person to prepare for the informal hearing.

b. If additional reasons and/or sanctions are added to the notice prior to, during or after the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person shall be granted an additional ten working days to prepare responses to the new reasons and/or sanctions, if such a request is made in writing by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter K. Administrative Appeals

§4157. Administrative Appeal

A. The provider, provider-in-fact, agent of the provider, billing agent, and/or affiliate of the provider may seek an administrative appeal from the notice of the results of an informal hearing if the provider, provider-in-fact, agent of the provider, billing agent, and/or affiliate of the provider has had one or more appealable sanctions imposed upon him or an appealable issue exists related to a corrective action plan imposed in a notice of the results of the informal hearing.

B. The notice of administrative appeal must be adequate as to form and lodged with the Bureau of Appeals within thirty days of the date on the notice of the results of the informal hearing. The lodging of a timely and adequate request for an administrative appeal does not affect the imposition of a corrective action plan or a sanction, unless the sanction imposed is exclusion. All sanctions imposed through the notice of the results of the informal hearing are effective upon mailing or FAXing of the notice of the results of the informal hearing to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider and/or other person, except exclusion from participation in the Medical Assistance Program or one or more of its programs.

C. In the case of an exclusion from participation if the Director of BHSF and/or the Director of Program Integrity determines that allowing that person to participate in the Medicaid Program during the pendency of the administrative appeal process poses a threat to the programmatic or fiscal integrity of the Medicaid Program or poses a potential threat to health, welfare or safety of any recipients, then that person may be suspended from participation in the Medicaid Program during the pendency of the administrative appeal. If the exclusion is mandatory a threat to Medicaid Program and/or recipients is presumed. This determination shall be made following the Informal Hearing.

D. Failure to lodge a timely and adequate request for an administrative appeal will result in the imposition of any and

ll sanctions in the notice of the results of the informal hearing and/or the corrective action plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4159. Right to Administrative Appeal and Review

A. Only the imposing of one or more sanctions can be appealed to the department's Bureau of Appeals.

1. The adversely effected party has the right to challenge the basis for the violation and the sanction imposed.

2. The adversely effected party must state specifically what the basis for the appeal is and what actions are being challenged on appeal.

B. The following actions are not sanctions, even if listed as such in the notice of sanction or notice of the results of the informal hearing, and are not subject to appeal or review by the department's Bureau of Appeals:

1. referral to a state, federal and/or professional licensing authority;

2. referral to the Louisiana Attorney General's Medicaid Fraud Control Unit or any other authorized law enforcement or prosecutorial authority;

3. referral to governing boards, peer review groups or similar entities;

4. issuing a warning to a provider and/or provider-in-fact or other person through written notice and/or consultation;

6. require that the provider, and/or provider-in-fact, their affiliates and agents receive education and training in laws, regulations, rules, policies, and procedures, including billing;

7. conducting prepayment or postpayment review;

8. place the provider's claims on manual review status before payment is made;

9. require that the provider and/or provider-in-fact receive prior authorization for any or all goods, services, and/or supplies under the Louisiana Medicaid program and/or one or more of its programs;

10. remove or restrict the provider's use of electronic billing;

11. any restrictions imposed as the result of a corrective action plan;

12. any restrictions agreed to by a provider, provider-in-fact, agent of the provider, and/or affiliate of the provider;

13. any terms or conditions contained in an arrangement to repay which has been agreed to by a provider, provider-in-fact, agent of the provider, and/or affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter L. Miscellaneous

§4161. Mailing

Mailing refers to the sending of a hard copy via U.S. mail or commercial carrier. Sending via facsimile is also acceptable, so long as a hard copy is mailed. The date of issuing or filing shall be the date of mailing or faxing, whichever occurred first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4163. Confidentiality

All contents of claim reviews and investigations conducted under this regulation shall remain confidential until a final administrative adjudication is entered. Prior to that, only the parties and/or their authorized agents and representatives may review the contents of the payment review and investigatory files, unless by law others are specifically authorized to have access to those files. These files may be released to law enforcement agencies, other governmental investigatory agencies, and/or specific individuals within the department who are authorized by the Secretary to have access to such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4165. Severability Clause

If any provision of this regulation is declared invalid and/or unenforceable for any reason by any court of this state or federal court of proper venue and jurisdiction, that provision shall not affect the validity of the entire regulation or other provisions thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§4167. Effect of Promulgation

This regulation, when promulgated, shall supersede any and all other departmental regulations which conflict with the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 46:437.1-46:440.3.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding the proposed rule. A public hearing will be held on this matter Tuesday, July 28, 1998 at 9:30 a.m. in the first floor auditorium of the Department of Transportation and Development 1201 Capitol Access Road, Baton Rouge, Louisiana. All interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. of the day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Surveillance and Utilization
Review Systems (SURS)**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no fiscal impact resulting from the implementation of this proposed rule for SFYs 1998, 1999, and 2000. However, state costs for promulgating this proposed rule, as well as the final rule, are \$1,866 and will be incurred in SFY 1999.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no Federal revenue collections. However, the federal share of printing this proposed rule, as well as the final rule, is \$1,866.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

Thomas D. Collins
Director
9806#064

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Targeted Case Management Services—Selective Contract

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Bureau of Health Services Financing currently provides coverage for case management services provided to home and community based services waiver participants and certain targeted populations. Currently, participation in the Medicaid Program as a provider of target case management services is open to any agency that meets the provider enrollment criteria described in the June 1997 rule governing case management services and the Case Management Services Provider Manual (*Louisiana Register*, Volume 23, Number 6).

In consultation with the Department of Education, the Office of Public Health, the Office of Elderly Affairs and the Office for Citizens with Developmental Disabilities, the Bureau proposes to reduce the number of case management agencies that may participate in the Medicaid program requirements and service descriptions will be clarified in the

request for proposals document. This action is necessary to ensure access to case management services in all regions of the state.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts provisions to establish a selective contract for provider participation in the Medicaid Program for the delivery of case management services.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Tuesday, July 28, 1998 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Targeted Case Management Services— Selective Contract

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No costs or savings to the state can be determined at this time. However, \$80 will be incurred in SFY 1998 for the state's administrative expense of promulgating the proposed rule as well as the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections. However, \$80 will be incurred in SFY 1998 for the federal share of promulgating this proposed rule as well as the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Implementation of the selective contract process will significantly reduce the number of providers of case management services participating in the Medicaid Program. However, the selective contract process will not affect Medicaid recipients' access to case management services. The selective contract process will enhance access to services by assuring sufficient case management participation among case management providers in all regions of the state.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The number of case management agencies participating in the Medicaid will be reduced through a selective contract process established by the Bureau of Health Services Financing.

Thomas D. Collins
Director
9806#066

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 65—Bail Bond/Bounty Hunter

Under the authority of Louisiana Revised Statutes Title 22, Sections 3, 7, 10, 658.1, 1065.1, 1113, 1404.3 and 1191(B), the Department of Insurance gives notice that the following proposed regulation is to become effective September 30, 1998. This intended action complies with the statutory law administered by the Department of Insurance.

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, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

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—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 the LSA-CCRP Article 345.

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 1st 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 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. A bail bond agent or solicitor 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

f 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 the apprehension or surrender of a principal when 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 duly executed agent's 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 of License; 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. No commercial surety shall fail to timely pay bond forfeiture claims that meet the requirements of LSA-R.S. 22:658.1A.

G. 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 person(s) who violate the provisions contained herein.

Section 7. Effective Date

This regulation shall become effective September 30, 1998.

A public hearing on this proposed regulation will be held on July 30, 1998 in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, Louisiana, at 10 o'clock a.m. All interested persons will be afforded an opportunity to make comments.

Interested persons may obtain a copy of this proposed regulation, and may submit oral or written comments to Claire I. Lemoine, Senior Attorney, Department of Insurance, P.O. Box 94214, Baton Rouge, Louisiana 70804-9214, telephone (504) 342-5317. Comments will be accepted through the close of business at 4:30 p.m. July 29, 1998.

James H. "Jim" Brown
Commissioner of Insurance

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 65—Bail Bond**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is not anticipated that Regulation 65 would result in any implementation costs or savings to local or state governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is not anticipated that Regulation 65 would result in any increase or decrease in revenue collections by state or local governmental units. There are currently 571 licensed bail bond agents/solicitors in the state. No significant increase or decrease in the number of licensed agents is expected as a result of this regulation.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Only licensed bail bond agents would be allowed to carry out apprehensions and surrenders of principals in the state of Louisiana; however, no direct economic benefit to them or to non-governmental groups is expected.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Regulation 65 prevents unlicensed bail bond agents from the apprehension and surrender of principals in Louisiana. It is not anticipated that this would have any impact on employment and competition.

Donald J. McLean, Jr.
Assistant Commissioner
Management and Finance
9806#049

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Labor
Plumbing Board**

Examination Integrity (LAC 46:LV.311)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Plumbing Board proposes to implement a new rule regarding the conduct of its examinations for licenses established by the Plumbing Law, R.S. 37:1361 et seq. The proposed rule prohibits certain uses of resource materials by examinees and establishes appeal rights for examinees determined to have violated these prohibitions.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part LV. Plumbers**

Chapter 3. Licenses

§311. Integrity of Examination

The Board may reject an examination for any license or endorsement under this Chapter, if it is determined that the applicant completed any portion of any such examination with the assistance of any other person or unauthorized written materials secreted into the examination site. Examinees will be allowed to utilize resource or industry code materials approved by the Board or its examiners conducting the examination. Examinees determined to have violated the prohibitions of this section shall be notified in writing and, upon request by the examinee or at the direction of the Executive Director, an informal conference before the Executive Director or committee appointed by the Board will be conducted. An affected examinee may appeal the determination reached in the informal conference by filing a written appeal with the Board. Such appeal hearings shall comport with the provisions of R.S. 49:955(B). Based on the evidence adduced at any such hearing, the board may impose sanctions upon the examinee with respect to any subsequently administered examination and related licensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366 (D).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 24:

Interested parties may comment on the proposed rule in writing on or before July 18, 1998 to Don Traylor, Executive Director, Plumbing Board, 2714 Canal Street, Suite 512, New Orleans, LA 70056.

Don Traylor
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Examination Integrity**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to State or local governmental units associated with the adoption of the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of State or local governmental units by the adoption of the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no costs or economic benefits to directly affected persons or non-governmental units associated with the adoption of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no significant effect on competition and employment anticipated in connection with the adoption of the proposed rule.

Louis L. Robein
Designee/Fund Attorney
9806#077

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Labor
Plumbing Board**

Examination Requirements (LAC 46:LV.305)

The Louisiana State Plumbing Board ("Board"), pursuant to R.S. 37:1366(A) and (D) and 1377, proposes to amend and restate Plumbing Regulation, LAC 46:LV.305.B, in accordance with the Administrative Procedure Act. The proposed rule change notifies the public of the establishment of a centralized testing location for persons seeking licensing as a journeyman or master plumber. Since the applicable rule relating examinations for master plumber applicants, LAC 46:LV.306, states that such examinations are to be conducted in conjunction with examinations conducted pursuant to §305.B, there is no need to restate the former rule. LAC 46:LV.305.B will be restated and/or amended as follows:

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LV. Plumbers

Chapter 3. Licenses

**§305. Requirements to Take Exam for Journeyman
Plumber's License**

* * *

B. Regular quarterly examinations will be held on the first Saturday of January, April, July and October in the City of Baton Rouge, or on such days specially set by the board. Regularly scheduled examinations are subject to postponement or relocation to accommodate legal holidays or other conditions beyond the control of the board.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(A) and (D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, amended LR 14:440 (July 1988), LR

15:1088 (December 1989), repromulgated, as amended, by the Department of Employment and Training, Plumbing Board, LR 17:51 (January 1991), amended by the Department of Labor, Plumbing Board, LR 24:

All currently stated Rules of the board, unless amended herein, shall remain in full force and effect.

Any interested person may submit written comments regarding the content of this proposed rule to Don Traylor, Executive Director, 2714 Canal Street, Suite 512, New Orleans, LA, no later than 5 p.m., July 16, 1998.

Don Traylor
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Examination Requirements**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is estimated that the Louisiana State Plumbing Board (Board) will save an estimated \$500 annually in examiner compensation, travel reimbursements and storage costs realized through the consolidation of quarterly examinations for license applicants at a central Baton Rouge situs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of State or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated economic benefits to directly affected persons is slightly beneficial. A centralized testing situs will offer greater testing opportunities to more interested persons.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is estimated that a favorable effect on competition in the Plumbing Industry will result from centralized testing facilities conducting regularly scheduled licensing examination.

Louis L. Robein
Designee/Fund Attorney
9806#075

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Natural Resources
Office of the Secretary**

Oyster Lease Relocation Program (LAC 43:I.850-858)

In accordance with the laws of the State of Louisiana, and with reference to the provisions of Title 56 of the Louisiana Revised Statutes of 1950, the Secretary of the Department of Natural Resources will consider evidence relative to the proposed rules governing the administration of the Oyster Lease Relocation Program, for 40 days after said publication.

The proposed amendments represent the views of the Secretary as of this date; however, the Secretary reserves the right to make additions or deletions prior to final adoption.

Title 43
NATURAL RESOURCES
Part I. Office of the Secretary

Chapter 8. Coastal Restoration

Subchapter B. Oyster Lease Relocation Program

§850. Purpose

LAC 43:I.Subchapter B is adopted pursuant to R.S. 56:432.1 et seq. to provide for the filing and processing, and the fair and expeditious Relocation of Oyster Leases, pursuant to Part XV of Chapter 1 of Title 56 of the Louisiana Revised Statutes of 1950. These rules are designed to insure that the Relocation procedure is as simple as possible, and these rules shall be interpreted in that spirit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§851. Definitions

Affected Lease—a current oyster lease which has been identified by the Department from records provided and maintained by DWF as being located in a Coastal Restoration Project Area, for which Project a specific funding source consistent with the provisions of either R.S. 56:432.1.E or R.S. 56:432.1.F is available, if required to implement these regulations and related statutes.

Coastal Restoration Project—a project authorized pursuant to R.S. 49:213.6, funded pursuant to R.S. 49:213.7, and implemented by the Secretary pursuant to R.S. 49:214.4.B and C.

Coastal Restoration Project Area—geographical extent of a Coastal Restoration Project as delineated by the responsible government agency or agencies for that Project.

Cultch Currency Matrix—an array used to determine the quantity of cultch material required to replicate certain substrate types located on specific lease areas.

DWF—the Louisiana Department of Wildlife and Fisheries, its Secretary, or his or her designee.

Department—the Louisiana Department of Natural Resources, its Secretary, or his or her designee.

Exchange Lease—a lease or leases of comparable value to the Affected Lease.

Leaseholder—the lessee of an oyster lease granted by DWF pursuant to R.S. 56:425 et seq., based on records provided and maintained by DWF.

Replacement Lease—a lease or leases selected by the Leaseholder in accordance with §855.G.

Secretary—the Secretary of the Department of Natural Resources or his or her designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§852. Notification of Leaseholders

A. Upon a determination by the Secretary that a specific Coastal Restoration Project authorized pursuant to R.S. 49:213.6 may potentially have an adverse impact on existing oyster leases issued by DWF and if funding is required, a specific funding source consistent with R.S. 56:432.1.E or R.S. 56:432.1.F is available to implement this regulation for such Project, the Secretary shall, to the last

address furnished to DWF by the Leaseholder, make a reasonable effort to provide notice of the Coastal Restoration Project to the Leaseholders of all Affected Leases located, either partially or wholly, within the Coastal Restoration Project Area.

B. Any notification made by the Secretary shall be deemed to have been made if sent by certified or priority United States mail, postage pre-paid, or pre-paid receipted express delivery service, or facsimile, to the last address furnished to DWF by the Leaseholder. Such notification shall include, at a minimum:

1. a description of the Coastal Restoration Project, and a map depicting the Coastal Restoration Project Area;

2. a copy of these regulations;

3. a statement that informs the Leaseholder that the Leaseholder's desire to participate in the relocation program must be confirmed in writing and delivered by certified mail to the Secretary within 30 days of the date of the notification letter. The statement shall also inform the Leaseholder that, should such confirmation not be received timely, then the Department shall presume that the Leaseholder does not desire to participate in the relocation program;

4. a statement that informs the Leaseholders that limited funding is available, and that available funds used to implement the provisions of LAC 43:I.Subchapter B shall be distributed to participating Leaseholders in the order in which responses from the Leaseholders are received (i.e., on a "first come, first serve" basis); and

5. a response form to be completed and returned to the Department, which form shall provide information confirming the Leaseholder's mailing address and the Leaseholder's selection of a relocation option.

C. In the event that multiple responses returned to the Department in accordance with §852.B.3 and §852.B.5 are received by the Department on the same day, the order of priority for the utilization of available funds shall be established by the drawing of lots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§853. Options

Upon a determination by the Secretary in accordance with LAC 43:I.852, the options listed in §§854, 855, 856 and 857 shall be available to Leaseholder(s) of lease(s) located in a Coastal Restoration Project Area. Notwithstanding any other provision in these regulations to the contrary, any obligation of the Department to expend funds shall be subject to the availability of funds as described in §852.A and the prioritization of funding as described in §852.B.4, except for the exchange option as provided in §854.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§854. Exchange

A. The exchange of an Affected Lease, including the Department's responsibility for payment of application and survey costs, shall be subject to the availability of funds as described in §852.A and the prioritization of funding as

escribed in §852.B.4. However, the Secretary may, at his discretion, make the exchange option available for specific Affected Leases notwithstanding the unavailability of funds as described in §852.A.

B. A Leaseholder may elect to exchange the Affected Lease for a lease or leases as described in §854.C on other acreage currently available for lease located outside of a Coastal Restoration Project Area which is acceptable to both the Leaseholder and DWF. Lease exchanges shall be in accordance with R.S. 56:423.1.B(1) and shall serve as a continuance of comparable operations for the Leaseholder. Exchange Leases shall begin a new term. Subject to the provisions of §854.A, the Department shall be responsible for all application and survey costs, except that payment will not be made for cost of survey of more than two Replacement Leases.

C. If the Leaseholder elects this option, the Department shall notify DWF. Affected Leases shall be exchanged for a maximum number of Exchange Leases as follows provided that the combined acreage of the Exchange Lease or Leases shall not exceed the acreage of the Affected Lease by more than ten percent.

1. Affected Leases between 0 and 20 acres in size shall be exchanged for no more than one Exchange Lease.

2. Affected Leases between 21 and 200 acres in size shall be exchanged for no more than two Exchange Leases.

3. Affected Leases between 201 and 500 acres in size shall be exchanged for no more than three Exchange Leases.

4. Affected Leases between 501 and 1000 acres in size shall be exchanged for no more than four Exchange Leases.

D. Within 30 days of the Department's receipt of the Leaseholder's response required in accordance with §852.B, the Leaseholder shall submit an application for an Exchange Lease or Leases. Applications for Exchange Lease locations shall be submitted by the Leaseholder and processed by DWF in accordance with the provisions of LAC 76:VII.501, "Oyster Leases," and §854.B and C.

E. Applications for Exchange Lease or Leases shall be accompanied by a written request from the Leaseholder to cancel the Affected Lease on December 31 of the calendar year immediately following the calendar year of application for the Exchange Lease or Leases. This written request shall be executed by the Leaseholder on a form provided by DWF. In the event that the term of the Affected Lease will expire prior to December 31 of the calendar year immediately following the calendar year of application for the Exchange Lease, the Department shall request that DWF, in accordance with the provisions of R.S. 56:428.1, issue a one-year bobtail lease for that Affected Lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§855. Relocation

A. The relocation of an Affected Lease, including the Department's responsibility for payment or reimbursement as provided in §855.C, shall be subject to the availability of funds and priority of funding, as described in §852.A and §852.B.4, respectively.

B. The Leaseholder may elect to relocate the Affected

ease to another lease area. The Affected Lease shall be assessed to determine, according to the amounts in the "Cultch Currency Matrix," §859.A, Table 1, the quantity of cultch material needed to relocate the Affected Lease. The Leaseholder shall cause the placement of that quantity of cultch material on:

1. any existing lease or leases held by the Leaseholder (other than in a Coastal Restoration Project Area); or

2. new available lease acreage selected by the Leaseholder in accordance with the provisions of §855.G.

C. Subject to the provisions of §855.A, the Department shall provide the following to make the Replacement Lease of comparable value to the Affected Lease.

1. Reimbursement, in accordance with the Department's determination of reasonable and allowable costs made under the provisions of §855.E, for the planting of the "Cultch Currency" equivalent in environmentally suitable cultch material.

2. Reimbursement, in accordance with the Department's determination of reasonable and allowable costs made under the provisions of §855.E, for the relocation of any live seed oysters present from the Affected Lease.

3. Reimbursement, in accordance with the Department's determination of reasonable and allowable costs made under the provisions of §855.E, for the marking, in accordance with the requirements of DWF, of the Replacement Lease.

4. the payment of any lease survey costs and application fees for the Replacement Lease or Leases, except that payment will not be made for cost of survey of more than two Replacement Leases.

D. The Affected Lease shall be evaluated to determine its "Cultch Currency" equivalent in cubic yards. The "Cultch Currency Matrix," §859.A, Table 1, provides a method to determine the quantity of cultch material required to replicate the substrate types located on specific lease areas.

1. The Leaseholder shall complete an authorization granting the Department or its contractors the right to enter the Affected Lease for the purpose of making an assessment of that lease.

2. An oyster biologist, certified under the provisions of LAC 43:I.4105, "Rules Governing Proceedings Before the Oyster Lease Damage Evaluation Board, Certification and Selection of Biologists," shall assess the Affected Lease to determine the quantity of cultch material required to replicate the substrate in "Cultch Currency."

a. The bottom substrates of the Affected Lease shall be assessed and evaluated by the oyster biologist to determine the spacial extent of the different bottom substrates present on each Affected Lease. A bottom substrate map shall be drawn showing the areas of each substrate. The area of each substrate contained within the Affected Lease shall be multiplied by the "Cultch Currency" value shown in §859.A, Table 1 for that particular substrate. Using the Cultch Currency Matrix, the total value, in cubic yards, of the existing bottom substrates shall be determined by the Department.

E. The Leaseholder shall be notified, by certified or priority United States mail, postage pre-paid, or pre-paid receipted express delivery service, or facsimile, of the determination of the Cultch Currency equivalent of the existing

ease, and the Department's determination of the level of reimbursement which is reasonable and allowable to effect the placement of the cultch currency quantity on a replacement lease selected by the Leaseholder; *and* cause the relocation of any living seed oysters; *and* effect the marking, in accordance with the requirements of DWF, of no more than two Replacement Leases.

1. Upon such notification, the Leaseholder shall have 30 days to either accept the reimbursement offer made by the Department, or to request purchase of the lease in accordance with §857.

2. In the event that the Leaseholder disagrees with the determination made by the Department of the total value of the existing bottom substrates according to the Cultch Currency Matrix, the Leaseholder may file a request for reconsideration in accordance with §858.

F. Upon acceptance of the reimbursement offer, the Leaseholder shall have 90 days to notify the Department of the date and lease or leases on which it intends to cause the placement of the cultch; such date shall be no later than 12 months from the Leaseholder's acceptance of the Department's offer made in accordance with §855.E.1. Upon placement of the cultch, the Leaseholder shall certify to the Department, in writing, that such placement has occurred. Such certification shall be accompanied by a receipt or invoice for allowable costs of the cultch placement stating the cost of the placement, as well as the location and quantity of such placement. Within 90 days of the receipt of such certification, the Department shall reimburse the Leaseholder for the amount of the invoice or receipt; provided, however, that the Department shall not reimburse the Leaseholder for any amount in excess of the Department's written determination of the level of reasonable and allowable compensation made in accordance with §855.E.

G. The Leaseholder shall elect to place the cultch either on an existing lease or leases currently held by the Leaseholder (provided that such existing lease or leases are not located in a Coastal Restoration Project Area), or on a Replacement Lease or Leases. If the Leaseholder elects the Replacement Lease or Leases option, the Department shall notify DWF. Affected Leases shall be exchanged for a maximum number of Replacement Leases as follows provided that the combined acreage of the Exchange Lease or Leases shall not exceed the acreage of the Affected Lease by more than ten percent.

1. Affected Leases between 0 and 20 acres in size shall be exchanged for no more than one Replacement Lease.

2. Affected Leases between 21 and 200 acres in size shall be exchanged for no more than two Replacement Leases.

3. Affected Leases between 201 and 500 acres in size shall be exchanged for no more than three Replacement Leases.

4. Affected Leases between 501 and 1000 acres in size shall be exchanged for no more than four Replacement Leases.

H. Within 30 days of the mailing of the Leaseholder's acceptance of the Department's reimbursement offer, the Leaseholder shall submit an application for Replacement Lease(s). Such applications shall be submitted and processed

in accordance with the provisions of LAC 76:VII.501, "Oyster Leases" and §855.G.

I. Subject to the limitations of §855.I.1, the Leaseholder shall have one year after the date on which the Leaseholder's selection of its relocation option is mailed to the Department in accordance with §852.B to remove any living seed and/or marketable oysters from the Affected Lease.

1. In the event that the Department notifies the Leaseholder that, due to Coastal Restoration Project implementation schedules, less than one year will be available for the removal of living marketable and seed oysters from the Affected Lease, the Leaseholder may request that the Department provide compensation for the losses of living marketable and/or live seed oysters remaining on the Affected Lease. Subject to the availability of funds as described in §852.A and §852.B.4, the Department shall cause the value of those remaining oyster resources to be determined, and, offer compensation for reasonable and allowable losses.

2. In the event that the Department notifies the Leaseholder, that due to delays in the Coastal Restoration Project implementation schedules, more than one year exists for the removal living marketable and/or seek oysters from the Affected Leases, the Secretary may, at his discretion, allow the Leaseholder, to continue the removal of any living marketable and/or seed oysters provided that the Leaseholder shall execute a receipt, release and hold harmless agreement which states that the lease is subservient and subordinate to the Coastal Restoration Project and that the Leaseholder accepts the risks of continuing to remove marketable and/or seed oysters in the area affected by this Project.

J. Applications for replacement leases shall be accompanied by a written request from the Leaseholder to cancel the Affected Lease on December 31 of the calendar year immediately following the calendar year of application for the Replacement Lease. This written request shall be executed by the Leaseholder on a form provided by DWF. In the event that the Affected Lease term will expire prior to December 31 of the calendar year immediately following the calendar year of application for the replacement lease, the Department shall request that DWF, in accordance with the provisions of R.S. 56:428.1, issue a one-year bobtail lease for the Affected Lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§856. Retention

A. The Leaseholder may elect to retain the Affected Lease without compensation. If the Leaseholder elects to retain the Affected Lease, he shall execute a release and hold harmless agreement and this election shall stipulate that the retained lease is subservient and subordinate to any Coastal Restoration Project, and that the Leaseholder accepts the risks of operating in the area affected by such projects.

B. Subsequent to election to retain, and in accordance with the provisions of R.S. 56:432.1.B(3), a Leaseholder may seek to pursue another option specified in §854, §855, or §857. In such event, the Leaseholder shall request the Secretary's

approval to utilize another option. The Secretary shall make every reasonable effort to accommodate such requests. However, in the event that a funding source is not available which meets the requirements of R.S. 56:432.1.E or R.S. 56:432.1.F, such request shall be denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§857. Purchase

A. The Department’s purchase of an Affected Lease shall be subject to the availability of funds and priority of funding as described in §852.A and §852.B.4, respectively.

B. Subsequent to the Department’s notification its determination of reasonable and allowable compensation has been in accordance with §855.E, the Leaseholder may elect to request that the Department purchase the Affected Lease. The Department, at its discretion, may purchase the Affected Lease, together with all improvements, if the purchase price is less than the reasonable and allowable compensation determined by the Secretary in accordance with §855.E.

C. Upon execution of a mutually agreeable purchase agreement, and payment of the purchase price, the Affected Lease shall be canceled on December 31 of the calendar year of purchase.

D. The Leaseholder may, at its sole cost, risk, and expense, remove living oyster resources from the purchased lease prior to its cancellation in accordance with §857.C, or prior to project implementation, whichever is earlier.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§858. Appeals

A. A determination of the level of reasonable and allowable compensation shall be reconsidered by the Secretary upon the Department’s timely receipt of the Leaseholder’s written notice under §858.C.1.

B. The reconsideration by the Secretary shall be limited to two bases.

1. The Leaseholder has substantial technical information evidencing inaccuracies in the bottom substrate map prepared under the requirements of §855.E. for the Affected Lease, or inaccuracies in the assessment of the quantity of living (i.e., live seed and marketable) oysters on the Affected Lease.

2. The Leaseholder has evidence that the determination of reasonable and allowable compensation is not consistent with the specific provisions of R.S. 56:432.1.

C. The Leaseholder’s request for reconsideration under §858 shall be made in writing to the Secretary, within 30 days of the Secretary’s determination of reasonable and allowable costs, and shall include, at a minimum:

1. a description of the specific basis for the request for reconsideration; and

2. written report that includes specific technical information substantiating any alleged inaccuracies in the bottom substrate map or in the assessment of the quantity of living oysters on the Affected Lease.

D. The Secretary’s decision shall be made to the Leaseholder, in writing, within 45 days of the Department’s receipt of the request for reconsideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

§859. Cultch Currency Matrix

A. Table 1

Table 1 CULTCH CURRENCY MATRIX: Matrix Values and Corresponding “Cultch Currencies”		
Substrate Type	*Matrix Value	Cultch Currency (Cubic Yds/Acre)
Reef	100 percent	187 cy/ac
Shell/Cultch	80 percent	150 cy/ac
Firm Mud	1 percent	2 cy/ac
Buried Shell	1 percent	2 cy/ac
Soft Mud/Sand	1 percent	2 cy/ac

B. The “Cultch Currency Matrix” is partially based on the Oyster Bottom Evaluation Methodology Report (Ray, Sammy M. 1996. Oyster Bottom Evaluation Methodology Report. Report to the La DNR, Baton Rouge, La. 20pp.). The quantities of cultch listed are specific for the type of substrate that the Leaseholder has on his existing lease. The DWF has determined that the rate of 150 cy/acre is sufficient to plant cultch for a state live seed ground and §859.A, Table 1 reflects that quantity as the cultch currency for the shell/cultch substrate type. The other cultch currency quantities are calculated depending on the matrix value percentage for each substrate.

C. Cultch Currency Matrix Example

Example

The Affected Lease is ten (10) acres in size and consists of 5 acres of shell reef, 2.5 acres of buried shell and 2.5 acres of soft mud. The formula for total cultch currency becomes:

“Total Cultch Currency” = the sum of substrate areas X cultch currencies/substrates or

$$\text{Total Cultch Currency} = \text{Substrate 1 X Cultch 1} + \text{Substrate 2 X Cultch 2} + \text{Substrate 3 X Cultch 3}$$

where

- Substrate 1 = the quantity, in acres, of the Substrate Type 1 on the Affected Lease,
- Cultch 1 = the cultch currency value, in cy/acre, of Substrate Type 1 on the Affected Lease,
- Substrate 2 = the quantity, in acres, of the Substrate Type 2 on the Affected Lease,
- Cultch 2 = the cultch currency value, in cy/acre, of Substrate Type 2 on the Affected Lease,
- Substrate 3 = the quantity, in acres, of the Substrate Type 3 on the Affected Lease, and
- Cultch 3 = the cultch currency value, in cy/acre, of Substrate Type 3 on the Affected Lease.

Using Table 1, in our example, our formula and values become:

$$\begin{aligned} \text{Total Cultch Currency} &= 5 \text{ ac (shell reef)} \times 187 \text{ cy/ac} + 2.5 \text{ ac (buried shell)} \times 2 \text{ cy/ac} + 2.5 \text{ ac (soft mud)} \times 2 \text{ cy/ac} \\ \text{Total Cultch Currency} &= 5 \times 187 \text{ cy/ac} + 2.5 \times 2 \text{ cy/ac} + 2.5 \times 2 \text{ cy/ac} = 935 \text{ cy} + 5 \text{ cy} + 5 \text{ cy} = 945 \text{ cy of cultch} \end{aligned}$$

Therefore in our example, 945 cy of cultch material is needed to relocate the existing 10 acre lease consisting of 5 acres of shell reef, 2.5 acres of moderate buried shell and 2.5 acres of soft mud. This amount of cultch material would be delivered by the Leaseholder, and if approved, the costs will be reimbursed by DNR, to the leases(s) of the Leaseholder's choosing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:432.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, LR 24:

Comments and views regarding the proposed Amendments may be directed in written form to be received no later than 5:00 p.m., July 30, 1998. A public hearing will also be held Thursday, July 30, 1998 at the Jean Lafitte Historical Parks and Preserve, The Wetlands Acadian Cultural Center Auditorium 314 St. Mary Street, Thibodaux Louisiana 70301. Direct comments to: Jack C. Caldwell, Secretary, Post Office Box 94396, Baton Rouge, Louisiana 70804-4396.

Jack C. Caldwell
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Oyster Release Relocation Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The shared cost of the Oyster Lease Relocation Program to the state and federal governments is expected to be as follows:

Fiscal 1998-1999	\$3,689,000
Fiscal 1999-2000	\$2,567,610
Fiscal 2000-2001	<u>\$2,567,610</u>
Total	\$8,824,220

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no net effect on tax revenue collections to the state and local governments as the majority of the leases will be moved to areas which are intended to be equally as productive as the current lease locations. The actual long term effect may be to preserve the tax base from the oyster industry.

There will however be an increase in federal revenues available to the State due to the federal participation in the cost of moving the leases.

The increased federal revenues will be as follows:

Fiscal 1998-1999	\$2,766,750
Fiscal 1999-2000	\$1,925,708
Fiscal 2000-2001	<u>\$1,925,708</u>
Total	\$6,618,166

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

A positive impact on the oyster industry is expected. If coastal wetlands loss is not abated the conditions may deteriorate to the point that oyster productivity will be adversely affected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No specific effects are anticipated, although a long-term overall increase in competition and employment may result from increased productivity of Louisiana's coastal resources, especially oysters.

Robert D. Harper
Undersecretary
9806#074

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Public Safety and Corrections
Board of Private Investigator Examiners**

Apprentice Licensing (LAC 46:LVII.512)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505(B)(1), the Department of Public Safety and Corrections, State Board of Private Investigator Examiners, hereby gives notice of its intent to amend Part LVII of Title 46, amending Chapter 5, Section 512.B and C.1 pertaining to licensing of apprentice private investigators.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the State Board of Private Investigator Examiners.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS
Part LVII. Private Investigator Examiners
Chapter 5. Application, Licensing, Training,
Registration and Fees**

§512. Licensing of Apprentices

* * *

B. An apprentice license shall be effective for one year only; and the apprentice shall operate as a private investigator only under the immediate direction, control and supervision of the sponsoring agency during that time.

C.1. The sponsoring agency shall be directly responsible for the supervising and training of the apprentice.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(A)(3) and (B)(1); and R.S. 37:3514(A)(4)(a).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:459 (June 1996), amended LR 24:

Comments should be forwarded to Linda F. Magri, Chairman of the board, Board of Private Investigator Examiners, 205 I Silverside Drive, Suite 190, Baton Rouge, LA 70808. Written comments will be accepted through the close of business on July 27, 1998.

Linda F. Magri
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Apprentice Licensing**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The operating expenditures for the Louisiana State Board of Private Investigator Examiners for fiscal year 1997-1998 are estimated to be approximately \$233,500; and for fiscal year 1998-1999 are estimated to be approximately \$223,600.

It is estimated that costs of \$350 will be incurred in fiscal year 1998-1999 to print and distribute this amended rule and regulation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no estimated effect on revenue collections caused by the adoption of this rule. The board is currently licensing apprentices. The rule simply deletes certain requirements for supervision of apprentices.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Licensees and supervisory agencies may save costs occasioned by the deletion of certain requirements previously required regarding apprentice supervision.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as the change to the rules will effect all persons and companies with apprentices.

Celia R. Cangelosi
Attorney for the Board
9806#060

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Board Hearings (LAC 42:III.108)

The Gaming Control Board hereby gives notice that it intends to amend LAC 42:III.108 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part III. Gaming Control Board

Chapter 1. General Provisions

§108. Board Hearings

* * *

E. A copy of the hearing officer's decision shall be mailed to all parties within two (2) business days of the date the decision is rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:77 (January 1997), amended LR 24:

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone number (504) 342-2465, and may submit written comments relative to these proposed rules, through July 10, 1998, to 339 Florida Boulevard, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Board Hearings**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no implementation costs to state or local government units estimated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collections of state or local government units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant costs and/or economic benefits to directly affected persons or nongovernmental groups are estimated.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is estimated.

Hillary J. Crain
Chairman
9806#022

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

Alcoholic Beverage Direct
Shipment (LAC 55:VII.901 and 903)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the authority of R.S. 14:93.20 and R.S. 26:364(D), notice is hereby given that the Department of Revenue, Office of Alcohol and Tobacco

ontrol proposes to adopt LAC 55:VII.901 and 903, pertaining to direct shipments of beverage alcohol to consumers within the state by wholesalers, retailers, or producers domiciled outside the state.

Act 728 of the 1997 Regular Session of the Louisiana Legislature enacted R.S. 14:93.20, which provides for the crime of unlawful shipments of beverage alcohol to Louisiana consumers under certain circumstances. R.S. 26:364(D) authorizes the Department of Revenue to establish by regulation any procedure for reporting or properly identifying shipments into the state.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Chapter 9. Direct Shipments of Beverage Alcohol

§901. Identification of Shipments

A. All shipments made by a wholesaler, retailer, or producer of beverage alcohol domiciled outside the state of Louisiana that are shipped directly to any consumer in Louisiana shall be identified as follows:

1. the words "Alcoholic Beverage—Direct Shipment" shall be marked and clearly visible on both the front and back of the package in lettering measuring at least one quarter inch in height; and

2. the words "Unlawful to Sell or Deliver to Anyone under 21 Years of Age" must be clearly visible on the front of the package, in lettering measuring at least one quarter inch in height.

B. The Louisiana registration or permit number assigned by the Office of Alcohol and Tobacco Control, pursuant to R.S. 14:93.20(C), of the wholesaler, retailer, or producer shall be clearly displayed on the front of the package.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:93.20 and R.S. 26:364(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

§903. Reporting of Shipments

A. For each shipment made by a wholesaler, retailer, or producer of beverage alcohol domiciled outside the state of Louisiana that is shipped directly to any consumer in the state of Louisiana, the shipper shall maintain the following records until December 31 of the year following the year in which the shipment was made. These records shall be available for inspection by the Office of Alcohol and Tobacco Control upon request

1. An invoice detailing the transaction as required by R.S. 14:93.20(C), which shall include, in addition to any other requirements of law, a line for the signature of the person receiving the shipment and the certification that the recipient is 21 years of age or older. The certification shall read as follows:

I acknowledge receipt of the referenced shipment containing beverage alcohol, and I hereby certify that I am 21 years of age or older.

Date of Receipt

Signature of Recipient

2. Below this certification, the invoice shall include the signed and dated certification of the individual making

delivery of the package containing beverage alcohol as follows:

The person to whom this package containing beverage alcohol has been delivered has shown proper proof of age to establish that he/she is 21 years of age or older.

Date of Delivery

Signature of Person Making Delivery

B. Each certification required by Subsection A of this Section must be signed and dated at the time of delivery to any consumer in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 14:93.20 and R.S. 26:364(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

Interested persons may submit data, views or arguments, in writing, to Murphy J. Painter, Commissioner, Office of Alcohol and Tobacco Control, Department of Revenue, Box 66404, Baton Rouge, LA 70896 or by facsimile to (504)925-3975. All comments shall be submitted by 4:30 p.m., Wednesday, July 29, 1998.

A public hearing will be held on Thursday, July 30, 1998, at 1 p.m. in the Seventh Floor Conference Room, 1885 Wooddale Boulevard, Baton Rouge, LA.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Alcoholic Beverage Direct Shipment

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the Beverage Alcohol Direct Shipment Program as provided for by Acts 1997 No. 728 will result in an increase in the Office of Alcohol and Tobacco Control's expenditures for the cost of two additional positions at an approximate annual cost of \$60,000 for salaries and related benefits.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Requiring out-of-state dealers that directly ship beverage alcohol to instate customers to register and pay a fee will result in an increase in the Office of Alcohol and Tobacco Control's self-generated funds. During the first quarter of 1998, 40 companies registered and paid the \$100 registration fee. Based on this data, it is estimated that 160 companies will register each year and pay total fees of \$16,000. A four percent annual growth rate was assumed to estimate the subsequent years.

In addition, requiring out-of-state dealers to collect the proper sales and excise taxes from direct shipments to instate customers will likely result in an increase in sales and excise tax collections, assuming that these monies were not previously collected. The Department does not have data to estimate the amount of these possible revenues.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Out-of-state dealers that directly ship beverage alcohol to instate customers will incur increased costs for the annual \$100 registration fee as well as increased administrative burden required to file the registration and sales invoice information. Based on registrations from the first quarter of 1998, it is estimated that 160 companies will register each year and pay

total fees of \$16,000. The dealers' increased administrative costs cannot be determined, but is expected to be minimal.

In addition, registered out-of-state dealers will collect the proper sales and excise taxes from direct shipments to instate customers, which could result in an increase in customer costs, assuming that these monies were not previously collected. The Department does not have data to estimate these possible additional costs.

It is possible that the receipts for these out-of-state dealers may be adversely impacted if customers, who purchased beverage alcohol from them only to avoid proper payment of sales and excise taxes, now choose to purchase from instate sellers. There is no data available to estimate this possible impact.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Acts 1997 No. 728 should equalize the competition for instate and out-of-state beverage alcohol dealers by ensuring proper registration and collection of the taxes. No impact on employment is expected.

Murphy J. Painter
Commissioner
9806#028

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.Subpart 2, the Family Independence Temporary Assistance Program (FITAP).

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, and an emergency rule effected this revised regulation on May 7, 1998.

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:

Interested persons may submit written comments by July 28, 1998 to the following address: Vera W. Blakes, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on July 28, 1998 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 504-342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Family Independence Temporary Assistance Program (FITAP)—Food Stamp Disqualifications

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The immediate implementation cost to state government is the cost of publishing the rule and the related policy revisions for the Family Independence Temporary Assistance Program (FITAP). This cost is minimal and funds for such actions are included in the program's annual budget. The change in disqualification of certain recipients convicted of drug-related crime will result in a very small number of individuals becoming eligible for FITAP benefits but the agency is unable to provide an estimate on costs at this time: special system programming would be required. (An emergency rule to effect this change beginning May 7, 1998 will prevent the assessment of any federal penalties to the state.) There are no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on revenue collection of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This action will affect a small number of recipients who may not have been eligible for FITAP benefits under previous policy. Federal law excluded felons with drug-related convictions from participating if the conviction occurred after August 22, 1996 but now excludes them only when the crime occurred after that date. The agency is unable to give an estimate of benefits as there is no way to determine the number of persons that were involved without special system programming.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9806#039

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

**Family Independence Work Program (FIND Work)
Participation Requirements (LAC 67:III.2907)**

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.Subpart 5, Family Independence Work Program, known in Louisiana as "FIND Work."

Public Law 104-193, as amended by Public Law 105-33, the Balanced Budget Act of 1997 mandated certain changes in the Individual Participation Requirements for each fiscal year from 1997 to the year 2003. Those changes to be effective in October 1998 are proposed as follows in §2907: change the participation requirement for a single parent/caretaker from 20 hours per week to 25 hours per week; to reflect that both parents in a two-parent family can contribute toward the family's participation requirement; to clarify when certain educational activities are countable; to reflect that not more than 30 percent of countable families may participate in vocational education; to include that a parent or caretaker who has received cash assistance for 24 months is required to engage in work, unless exempt; and to clarify the exempt status granted to certain individuals. This rule is necessary to affect those changes.

**Title 67
SOCIAL SERVICES**

Part III. Office of Family Support

**Subpart 5. Family Independence Work Program
(FIND Work)**

Chapter 29. Organization

Subchapter B. Participation Requirements

§2907. Individual Participation Requirements

A.1. ...

2. A parent/caretaker not included in the cash assistance certification, for any reason other than a FIND Work sanction, is exempt.

B. ...

1. A single parent/caretaker eligible for cash assistance is required to participate at least 25 hours per week, with not fewer than 20 hours per week attributable to an activity described in §2911.A.1,2,3,4,5,9 or 10.

2. In any two-parent family eligible for cash assistance, the parent/caretaker and the other parent/caretaker in the family must participate a combined total of at least 35 hours per week, with not fewer than 30 hours per week attributable to an activity described in §2911.A.1,2,3,4,5,9 or 10. If child

are is provided, the parent/caretaker and the other parent/caretaker in the family must participate a combined total of at least 55 hours per week, with not fewer than 50 hours per week attributable to an activity described in §2911.A.1,2,3,4,5,9 or 10.

3. All participation in activities described in §2911.A.6 and 7 may be counted for heads of household who have not attained 20 years of age. For all other participants, participation in activities described in §2911.A.6, 7 and 8 may be counted if the parent/caretaker meets the requirements described in §2907.B.1 or 2 for the first 20 hours of participation in all families and the first 30 hours of participation in two-parent families.

4. Not more than 30 percent of individuals in all families and in two-parent families, respectively, who meet countable participation requirements in a month, may consist of individuals who meet countable participation requirements in the vocational education activity described in §2911.A.5.

C. A parent or caretaker who has received cash assistance for 24 months (whether or not consecutive) since January 1, 1997 is required to engage in work, unless determined exempt as described in §2907.A. Engaged in work is defined as:

1. satisfactorily participating in a countable FIND Work activity as described in Subchapter C, §2911; or

2. satisfactorily participating in an alternate FIND Work activity approved by the Office of Family Support.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 16:626 (July 1990), amended by the Department of Social Services, Office of Family Support, LR 16:1064 (December 1990), LR 19:504 (April 1993), LR 19:1177 (September 1993), LR 23:450 (April 1997), LR 24:

Interested persons may submit written comments by July 28, 1998 to: Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, Louisiana, 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on July 28, 1998 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Family Independence Work Program
(FIND Work)—Participation Requirements**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no costs or savings to state or local governmental units associated with this rule. The administrative cost of

ublishing the rule and printing policy revisions is negligible.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no anticipated effect on costs and/or benefits to directly affected persons or nongovernmental units.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9806#040

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Social Services Office of Family Support

Food Stamps—Drug-Related Disqualification (LAC 67:III.1707 and Chapter 19)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.Subpart 3, Food Stamps.

In 1996 Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act, provided that recipients who had been convicted after the date of enactment for certain drug-related offenses would be disqualified from participation in the Food Stamp Program. Public Law 105-33, the Balanced Budget Act of 1997, amended the law to provide that the offense had to have occurred after that date. This clarification was received by the agency in April 1998 and an emergency rule to amend LAC 67:III.1988 was signed on May 7, 1998. This Notice proposes the change in program regulations.

Also, since Louisiana now issues food stamp benefits electronically, additional sections citing the actual food coupons and the Authorization-to-Participate (ATP) cards will be repealed or amended to remove such references. §1917 includes updating of regulations affecting meal providers pursuant to USDA, FNS Waiver Number 970311 granted to the OFS Electronic Benefits Transfer section (see Notice of Intent, LR 24:816). In §1935 reference to an obsolete policy manual is being deleted with no essential change in the regulation.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 17. Administration

Subchapter B. General Administrative Requirements

§1707. Elimination of Food Stamp Purchase

Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 43:47846 et seq. and R.S. 49:954.1(C), 7 CFR 274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 4:511 (December 1978), repealed by the Department of Social Services, Office of Family Support, LR 24:

Chapter 19. Certification of Eligible Households Subchapter B. Application Processing §1913. Determination of Eligibility of Migrant or Seasonal Farmworkers

A. ...

1. Proration of Initial Month's Benefits. The first provision affects the proration of benefits after a break in participation in the Food Stamp Program. This provision requires that migrant and seasonal farmworkers receive the full allotment for a month of application when the household has participated in the program within 30 days prior to the date of application. Thus, unless the household's break in participation exceeds 30 days, the migrant or seasonal farm worker household is eligible for a full month's allotment, rather than a prorated allotment, in the month of application.

A.2. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.2.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 14:602 (September 1988), LR 14:871 (December 1988), amended by the Department of Social Services, Office of Family Support, LR 24:

§1917. Homeless Meal Provider

A. A *homeless meal provider* is a public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) approved by the Office of Family Support that feeds homeless food stamp households. To be eligible to accept food stamp benefits, a meal provider must also be authorized by Food and Nutrition Service (FNS) after the Office of Family Support approves it.

B. The provider must serve meals that include food purchased by the establishment. A meal provider serving only meals which consist wholly of donated foods is not eligible for authorization.

C. Only those food stamp households determined to be homeless shall be permitted to use food stamp benefits to purchase prepared meals served by authorized homeless meal providers. To ensure that the use of food stamp benefits for prepared meals is restricted to homeless persons, homeless meal providers shall establish that person's right to use food stamp benefits to purchase meals.

D. Applicant meal providers must apply for approval at the Office of Family Support in their parish. An approval review at the provider's establishment will be conducted by the regional program specialist. After approval has been granted by OFS, the provider must then make application to an FNS field office to receive authorization to accept food stamp benefits. The FNS office is located at 777 Florida Street, Room 174, Baton Rouge, Louisiana 70801, telephone number 504-389-0491.

E. Homeless meal providers may accept food stamp benefits as authorized retail redemption points after authorization from the Office of Family Support and FNS. The provider will receive settlement from the Federal Treasury as

n electronic deposit directly to the provider's account at a financial institution. Homeless meal providers that redeem food stamp benefits in excess of \$100 per month will be provided equipment that will allow acceptance, redemption and settlement of program funds electronically. Others may participate by using manual vouchers.

F. The use of food stamp benefits to purchase meals from homeless meal providers is voluntary on the part of food stamp recipients. Food stamp recipients must continue to be given the option of using cash if payment for a meal is required. In addition, if others have the option of eating free or making a monetary donation, homeless food stamp recipients must be given the same option (eat free, or donate money or food stamp benefits). The amount requested from homeless food stamp recipients using food stamp benefits to purchase meals may not exceed the average cost to the homeless meal provider of the food contained in a meal served to the patrons of the meal provider. If a homeless recipient voluntarily pays more than the average cost of food contained in a meal served, such payment may be accepted by the meal provider.

G. Homeless meal providers will not be permitted to serve as "authorized representative" for homeless food stamp households.

AUTHORITY NOTE: Promulgated in accordance with F.R. 52:7554 et seq., 7 CFR 273.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:437 (August 1987), LR 3:287 (May 1987), amended by the Department of Social Services, Office of Family Support, LR 24:

Subchapter E. Students

§1935. Dependent Care for Students

Eligible students with dependents must be responsible for a dependent household member under the age of six; or be responsible for the care of dependent household member who has reached the age of six but is under age 12 where the Office of Family Support has determined that adequate child care is not available; or be receiving benefits from the Family Independence Temporary Assistance Program.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 24:

Subchapter J. Determining Household Eligibility and Benefit Levels

§1985. Determining Eligibility

A.1. - 4. ...

5. Repealed.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:53309 et seq., 7 CFR 271, 272, 273.10, 274.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:64 (February 1983), amended by the Department of Social Services, Office of Family Support, LR 24:

§1987. Categorical Eligibility for Certain Recipients

A.1. - 2. ...

3. "Recipient" includes a person determined eligible to receive zero benefits, e.g., a person whose benefits are being recouped or a FITAP recipient whose benefits are less than

10 and therefore does not receive any cash benefits.

4. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274; F.R. 56:63612-63613.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended LR 12:755 (November 1986), amended by the Department of Social Services, Office of Family Support, LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 24:

§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:

§1992. Issuing Benefits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 274.2(c)(1).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 18:1268 (November 1992), LR 19:783 (June 1993), repealed LR 24:

§1993. Replacement of Benefits

A. Replacement issuances shall be provided only if a household timely reports a loss (food purchased with food stamp benefits has been destroyed in a household misfortune) and executes the proper affidavit. Replacement issuances shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value.

B. If the signed statement or affidavit is not received by the agency within 10 days of the date of report, no replacement shall be made. If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the agency shall consider the statement timely received. Replacement issuances shall be provided to households within 10 days after report of loss or within two working days of receiving the signed affidavit, whichever date is later.

AUTHORITY NOTE: Promulgated in accordance with F.R. 54:6989 et seq., 7 CFR 273.10.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), amended by the Department of Social Services, Office of Family Support, LR 19:783 (June 1993), LR 24:

Interested persons may submit written comments by July 28,

998 to the following address: Vera W. Blakes, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on July 28, 1998 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 504-342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Drug-Related Disqualification in Food Stamps**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The immediate implementation cost to state government is the cost of publishing the rule and the related policy revisions for the Food Stamp Program. This cost is minimal and funds for such actions are included in the program's annual budget. The change in disqualification of certain recipients convicted of drug-related crime will result in a small number of individuals becoming eligible for benefits but benefits are 100 percent federally funded. (An emergency rule to effect this change beginning May 7, 1998 will prevent the assessment of any federal penalties to the state.) There are no costs associated with other proposed changes. There are no costs or savings to local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collection of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This action will affect a small number of recipients who may not have been eligible for food stamp benefits under previous policy. Federal law excluded felons with drug-related convictions from participating if the conviction occurred after August 22, 1996 but now excludes them only when the crime occurred after that date. The agency is unable to give an estimate of benefits as there is no way to determine the number of persons that will be involved.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9806#042

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the Louisiana State
Employees' Retirement System**

Disability Determinations
(LAC 58:I.Chapter 25)

In accordance with R.S. 49:950 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to amend and reenact the following rules revising LAC Title 58, Part I, Chapter 25. The proposed rules set forth the procedures for the administration of the disability program administered by the Board of Trustee of LASERS as established at R.S. 11:212 et seq. and 11:461 and 462.

These rules comply with the above cited statutory law and are enabled by R.S. 11:515. The purpose of the rules is to conform the rules to the current statutory requirements of the program; implement a recertification program for disability retirees as set forth in law; and to establish a rehabilitation and surveillance program for disability retirees.

Title 58

**Part I. Louisiana State Employees' Retirement System
Chapter 25. Disability Determinations**

§2501. Use of a Third-Party Administrator

Wherever in this chapter the term *LASERS* is used, it shall include any Third-Party Administrator (TPA) who, under contract with this system, manages any portion of the disability benefits administered by the Louisiana State Employees' Retirement System (LASERS). Claimants will be advised how to contact the TPA to fulfill their responsibility in supplying the requisite documentation to process their claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2503. Application for Disability Retirement

A. Applications for disability retirement shall be submitted in accordance with instructions provided to the applicant or applicant's employer by LASERS, and shall be reviewed as follows.

1. Upon receipt of a disability application, LASERS shall verify applicant's eligibility within two (2) business days of receipt of the application.

2. The Application; Examining Physician's Report; the Disability Report by Immediate Supervisor; and Report by Applicant's Human Resource Administrator shall be reviewed for completeness.

3. If the Application or any of the required forms are incomplete or missing, the applicant shall be notified in writing, and will have ten (10) business days to furnish the requested information. If the applicant fails to comply with

this request, the Application shall be rejected as ineligible.

B. Whether the applicant is determined to be eligible or ineligible to apply for disability, the applicant shall be notified in writing by LASERS within ten (10) business days of the determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2505. Disability Board Physician's Recommendation

A. LASERS shall determine the appropriate State Medical Disability Board physician to perform the initial medical examination, based on the area of medical specialty most closely related to applicant's disability.

B. If the State Medical Disability Board does not have a physician practicing in the requisite specialty, LASERS shall appoint a physician who practices in the requisite specialty to the Board or as an alternate physician to perform the initial medical examination.

C. If the applicant's condition may be terminal, LASERS shall forward applicant's medical records to the appropriate Board physician for review and recommendation.

D. If the applicant's condition is not potentially terminal, LASERS shall schedule an appointment with the appropriate Board physician. The applicant shall be notified of the appointment date and time in writing. The initial examination shall be completed within six (6) weeks of the date the completed disability application is received and eligibility is verified by LASERS.

E. LASERS shall pay the cost of the initial examination, including cost of laboratory tests, x-rays, and other direct examination procedures. If the Applicant fails to appear for this examination and the physician charges a cancellation fee, the Applicant shall be responsible for this fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2507. Final Determination

A.1. LASERS shall review the Disability Board physician's recommendation and based on that recommendation, either approve, or disapprove the application. An applicant shall be considered as certified totally disabled when the Board physician declares the applicant to be totally incapacitated for the further performance of the normal duties of the job and states that such incapacity is likely to be permanent. In all cases, the examining physician shall make a recommendation if the application should be approved or disapproved. If the physicians recommendation is unclear, the file shall be forwarded to the disability manager for review. The disability manager shall contact the Board physician for clarification of the recommendation.

2. If a correction officer, probation or parole officer, or security officer of the Department of Public Safety and Corrections, or an employee of the enforcement division in the Department of Wildlife and Fisheries is found to be

permanently totally or partially disabled the applicant shall be entitled to a disability retirement benefit in accordance with either R.S. 11:212 B. or 214, as applicable.

B. If the disability manager cannot make a clear determination, the file shall be sent to LASERS' Executive Director, who shall contact the Board examining physician for clarification, or another State Medical Board physician for consultation, or an appointed alternate physician shall be consulted when necessary.

C. Any unusual applications shall immediately be presented to the Executive Director for his review and determination on how it should best be handled.

D. When the final determination is made, the applicant shall be notified in writing and a copy shall be forwarded to applicant's agency.

E. A final determination shall be made within One Hundred and Twenty (120) days from the date the completed application is verified by LASERS.

F. Disability benefits shall accrue from the date the application was filed or from the day following exhaustion of all sick leave or annual leave claimed by applicant, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2509. Contesting Board Physician's Determination

A. If the certification of the examining physician is contested by either the Applicant or LASERS, the contesting party shall have the right to a second medical examination if a written appeal is filed within thirty 30 days of notification of the initial determination.

B. The second examination shall be performed by a State Disability Board Physician, or appointed alternate physician. LASERS shall schedule the appointment and notify the applicant of the time and place of the second examination in writing.

C. The cost of the second examination shall be paid by the contesting party. If the Applicant fails to appear for this examination and the physician charges a cancellation fee, the Applicant shall be responsible for this fee.

D. If the second physician concurs in the findings and recommendations of the first physician, the original decision shall stand as final and binding on the parties.

E. If the second physician disagrees with the first physician's finding and recommendation, the two physicians shall select a third physician to conduct another examination. The findings and recommendations of the third physician shall be binding, and the cost of the third physician shall be paid by LASERS if the applicant is certified disabled, or by the applicant if the disability claim is denied. If the Applicant fails to appear for this examination and the physician charges a cancellation fee, the Applicant shall be responsible for this fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement

System, LR 22:373 (May 1996), amended LR 24:

§2511. Judicial Appeal

The applicant has the right to appeal the decision that applicant is not entitled to a disability retirement to the Nineteenth Judicial District Court, Parish of East Baton Rouge. This appeal shall be filed within 30 days of the receipt of the final medical decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2513. Certification of Continuing Eligibility

A. LASERS requires a disability retirees to undergo a medical examination once each year during the first five years following the disability retirement, and once in every three-year period thereafter until the retiree has reached the equivalent age of regular retirement, unless the medical evidence shows conclusively that the disability retiree cannot recover from the disability.

B. LASERS shall schedule the appointment with a State Medical Board or appointed alternate physician and notify the disability retiree of the appointment time and place in writing. The disability retiree must pay the cost of this examination. If the retiree fails to appear for this examination and the physician charges a cancellation fee, the retiree shall be responsible for this fee.

C. The disability retiree shall be notified in writing of the physician's determination.

D. If the physician does not recommend continuing disability, the disability retiree has the same appeal rights as the original applicant as set forth in §2509 herein.

E. If the disability retiree refuses to submit to the examination, his benefit shall be discontinued until he agrees to the examination. The benefit will be discontinued thirty (30) days after written notification to the disability retiree. If the refusal continues for one year, all of the retiree's rights in and to the disability benefit shall be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2515. Limitation on Earnings

A. If a disability retiree is gainfully employed, the amounts of the retiree's earnings are limited; the total amount of earnings plus the disability benefit cannot exceed his final average compensation.

B. For purposes of computing this limitation, an annual cost-of-living adjustment to the final average compensation shall be made based on the Federal Consumer Price Index for the preceding calendar year.

C. The disability retiree must notify LASERS immediately if the retiree becomes employed and the retiree's earnings will exceed the limitation.

D. Each disability retiree shall submit a notarized annual statement of earned income for the previous calendar year. The statement must be submitted no later than May 1, of each calendar year, otherwise the benefit will be discontinued effective June 1 of that calendar year, without retroactive

reimbursement, until the statement is filed. If a disability retiree refuses to submit the statement for the remainder of the calendar year, all the retiree's rights in and to the disability retirement shall be revoked.

E. If the earnings limit is exceeded, future benefits shall be reduced to recover the amount of excess earnings. The disability retiree shall be notified in writing of the reduced amount at least 30 days prior to the reduction taking effect.

F. If it is determined that a disability retiree is engaged in gainful occupation which places the retiree over the earnings limit, then the amount of the disability benefit shall be reduced to an amount within the retiree's earnings limit. Should the retiree's earning capacity later change, the disability benefit may be further modified in accordance with R.S. 11:221.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2517. Report to the Board of Trustees

A. The approved applicants' names shall be provided to the Board in addition to the monthly retirement supplement for the Board's ratification.

B. The Board shall receive a summary report of the number of applications received, the number approved, the number disapproved, a summary of the types of disabilities, the average age of approved applicants, the average number of years of state service, and the agencies of the applicants annually in March for the previous calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:

§2519. Appointment of Physicians to the State Medical Disability Board

Physicians may be appointed to the State Medical Disability Board or as an alternate physician by the Executive Director. Such appointments shall be subject to ratification by the Board of Trustees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 24:

§2521. Rehabilitation

A. In accordance with R.S. 11:462, LASERS shall make a determination whether a disability retiree will benefit from rehabilitation, to the extent that the rehabilitation will permit the disability retiree to perform the normal duties required by the job from which the retiree is collecting disability benefits, in accordance with the following procedures.

1. A case manager shall meet with the disabled employee to assess the needs and disability status.

2. The evaluation shall include discussions with health care professionals to determine if this disability retiree would benefit from rehabilitation.

3. After all aspects of the disabled retiree's situation have been reviewed, the development of an individualized rehabilitation program shall be developed. This plan shall

pell out the course of action intended to be taken to rehabilitate the disabled retiree.

4. When the rehabilitation plan has been developed, the plan shall be submitted to LASERS' Executive Director for approval.

5. Once the rehabilitation plan is approved the case manager will be responsible for monitoring, evaluating, and following through on the plan.

B. If it is determined that rehabilitation will benefit a disability retiree under §2521, participation in the rehabilitation program shall be mandatory.

C. Once the disabled retiree successfully completes the rehabilitation plan, the disability retiree shall be scheduled for a certification of continuing eligibility in accordance with §2513 herein.

D. LASERS cannot guarantee employment once rehabilitation is complete.

E. If a disability retiree participates in the rehabilitation program and cannot be rehabilitated to perform the normal duties of the retiree's job from which the retiree is disabled, but is rehabilitated to the extent that the retiree can perform certain gainful occupation and the disability retiree is employed in such an occupation, the wages earned by this disability retiree shall be subject to §2515 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 24:

§2523. Surveillance

In order to insure that a disability retiree is entitled to the benefit the retiree is receiving, when reasonable suspicion exist that the disability retiree is not permanently disabled, LASERS may initiate surveillance of the disability retiree. If the surveillance indicates that the disability retiree is not currently disabled, LASERS shall require the disability retiree to undergo a certification of continuing eligibility in accordance with §2513 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 24:

§2525. Termination of Benefits

A. Upon receipt of a final medical determination that a disability retiree is no longer disabled as a result of the failure to obtain a certification of continuing eligibility the retiree shall have the right to appeal the medical determination under §2509 herein.

B. The disability retiree has the right to appeal this decision to the Nineteenth Judicial District Court, Parish of East Baton Rouge. This appeal shall be filed within thirty (30) days of the receipt of the Board's decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 24:

§2527. Notices

All notices required to be given under Chapter 25 shall be given as follows:

1. If a disability retiree, the notice shall be given with the retiree's benefit check. If the retiree is receiving his benefit through an electronic fund transfer (EFT), the EFT shall be discontinued for the month notice is required and the retiree shall receive a paper check for that month; or

2. If no benefit is being paid by LASERS, the notice shall be by certified mail, return receipt requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 24:

§2529. Conversion to Regular Retirement

In accordance with R.S. 11:217, when a disability retiree vest in a regular retirement benefit under R.S. 11:441, except R.S. 11:441(4), the disability retiree shall be converted to a regular retiree upon attaining the normal vested retirement age and shall receive the full vested benefit. The retiree shall have the option to, but not be required, to select the regular retirement benefit under R.S. 11:441(4) in lieu of a disability retirement benefit if the retiree qualifies for the benefit under R.S. 11:441(4).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the State Employees' Retirement System, LR 24:

Interested persons may submit written opinions, suggestions or data to Kevin P. Torres, General Counsel, the Louisiana State Employees' Retirement System, 8401 United Plaza Boulevard, Room 145, Baton Rouge, Louisiana 70809 through July 31, 1998.

James O. Wood
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Disability Determinations

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No implementation costs to the state or local governmental units are anticipated because of the proposed rules. It is anticipated that the new procedures on rehabilitation should save the System money, but we will not know this until some time after the regulations become effective.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
These regulations will have no impact on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The only economic impact would be on those persons who are recertified not disabled or rehabilitated, since they would be removed from the disability roles and would no longer receive a benefit.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
It is anticipated that those individuals who are removed from the disability roles will be seeking employment, but we have no historical data to estimate how many people this will be. Our

stimates suggest that it should be less than 30% of the current eleven hundred disability retirees in this System.

James O. Wood
Executive Director
9806#017

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of the Treasury
Housing Finance Agency**

HOME Affordable Rental
Housing (LAC 16:II.105)

In accordance with R.S. 49:950 et seq., the Louisiana Housing Finance Agency is proposing to adopt the following rule amending the regulations governing the criteria used to award HOME Funds to Affordable Rental Housing Projects.

The purpose of the amendment is to increase the categories in which the projects may be awarded points toward selection for the award of HOME Funds.

Title 16

COMMUNITY AFFAIRS

Part II. Housing Finance Agency

Chapter 1. HOME Investment Partnership Program

§105. Selection Criteria to Award HOME Funds for Affordable Rental Housing

Applications for HOME Funds will be rated in accordance with the selection criteria (Appendix IX) for which the applicant must initially indicate that the project qualifies.

APPENDIX IX

Selection Criteria to Award Home Funds to Affordable Rental Housing Projects

The Applicant hereby requests priority consideration based upon the Project satisfying one or more of the following conditions (minimum threshold of 115 points required):

- | | POINTS |
|---|---------------|
| A. <i>Project Provides Amenities</i> (attach description of amenities to be provided) | 20 _____ |
| B. <i>Project Provides Community Facilities</i> | 20 _____ |
| C. <i>Ratio of Project's Intermediary Cost to Development Costs</i> (See Page 5 for formula to calculate ratio) | |
| (i) Less than or equal to 10 percent | 20 _____ |
| (ii) More than 10 percent but less than or equal to 15 percent | 15 _____ |
| (iii) More than 15 percent but less than or equal to 20 percent | 10 _____ |
| (iv) More than 20 percent | 0 _____ |
| D. <i>As indicated in Section V on Page 8, thirty percent or more of project units serve households whose incomes are at the following percentages of median income</i> | |
| (i) 20 percent or less | 25 _____ |
| (ii) more than 20 percent but less than 30 percent | 20 _____ |
| (iii) more than 30 percent but less than 40 percent | 15 _____ |
| (iv) more than 40 percent but less than 45 percent | 10 _____ |
| E. <i>Project will enter Extended Low Income Use Agreement years of compliance period agreement to continue low income restrictions</i> | |
| (i) 20 years or more | 10 _____ |
| (ii) 25 years or more | 15 _____ |
| (iii) 30 years or more | 20 _____ |

- | | |
|--|------------------|
| . <i>Project Located in Qualified Census Tract/ Difficult Development Area / RD Target Area</i> | 25 _____ |
| G. <i>Project Serves Special Needs Groups [Check one or more]</i> | |
| (i) Elderly _____ | |
| (ii) Homeless _____ | |
| (iii) Handicapped _____ | |
| (a) One Hundred Percent of units or fifty units serve special needs group | 20 _____ |
| (b) Fifty Percent or 25 units serve special needs group | 15 _____ |
| (c) Twenty-Five Percent or 15 units serve special needs group | 10 _____ |
| H. <i>Project contains Handicapped Equipped Units</i> | |
| (i) 5 percent but less than 10 percent | 5 _____ |
| (ii) 10 percent but less than 15 percent | 10 _____ |
| (iii) 15 percent or more | 15 _____ |
| I. <i>Project Serves Large Families</i> | |
| <i>Percentage of Units having Four or more Bedrooms</i> | |
| (i) 5 percent but less than 10 percent | 5 _____ |
| (ii) 10 percent but less than 15 percent | 10 _____ |
| (iii) 15 percent but less than 20 percent | 15 _____ |
| J. <i>Project to Provide Supportive Services (attach description of Supportive Services to be provided, the costs thereof and the source of funding such services)</i> | 25 _____ |
| K. <i>Project is Single Room Occupancy</i> | 10 _____ |
| L. <i>Project is Scattered Site</i> | 30 _____ |
| M. <i>Developer submitted an executed Referral Agreement with Local PHA pursuant to which Developer agrees to rent low income units to households at the top of PHA's waiting list</i> | 10 _____ |
| N. <i>Project has RD Financing Commitment Letter</i> | 10 _____ |
| O. <i>Project involves New Construction in Areas with 95 percent or more residential rental occupancy</i> | 10 _____ |
| P. <i>Local Nonprofit Sponsor of Project</i> | 10 _____ |
| Q. <i>Distressed Properties (written certification from HUD or RD that property is distressed must be included in application)</i> | 20 _____ |
| R. <i>Project Receives Historic Tax Credits or involves Substantial Rehabilitation</i> | 25 _____ |
| | or |
| <i>Project located in historic district but does not qualify for historic credits</i> | 15 _____ |
| (Certification by local jurisdiction is required) | |
| S. <i>Project is an Abandoned Project</i> | 15 _____ |
| T. <i>Vacant Units in Project as Percentage of Total Units</i> | |
| (i) Minimum of 25 percent and less than 50 percent | 10 _____ |
| (ii) Minimum of 51 percent and less than 75 percent | 20 _____ |
| (iii) Minimum of 76 percent and less than 100 percent | 30 _____ |
| U. <i>Project involves Low Income Units which do not exceed:</i> | |
| (i) 60 percent of the Total Project units | 10 _____ |
| (ii) 50 percent of the Total Project units | 15 _____ |
| (iii) 40 percent of the Total Project Units | 20 _____ |
| V. <i>Leverage Ratio (Divide Total Dollars from Sources other than HOME Funds by HOME Funds and round to nearest whole multiple)</i> | |
| | 1 _____ 0 _____ |
| | 2 _____ 5 _____ |
| | 3 _____ 10 _____ |
| | 4 _____ 15 _____ |
| | 5 _____ 20 _____ |
| | 6 _____ 25 _____ |
| | 7 _____ 30 _____ |
| | 8 _____ 35 _____ |
| W. <i>Project Involves Lease-to-Own of one unit buildings with Title Transfer to Occupant within 20 years of Placed in Service</i> | 25 _____ |
| X. <i>Contact Person who Attended Agency sponsored Workshop</i>
Specify Name of Contact Person: _____ | 10 _____ |
| Y. <i>Developer Fees (including Builder Profit and Builder Overhead when there exists Identity of Interest between Builder and Developer) are 10 percent or less of Developer Fee Base</i> | 15 _____ |
| Z. <i>Penalty Points</i> | |
| (i) Net Syndication Proceeds ≤ 110 percent Developer Fee | 15 _____ |
| (ii) Incomplete or Missing Exhibits, Appendices or | |

Documents
(5 - Points to be deducted per item)

Item 1. _____ 5 _____
 Item 2. _____ 5 _____
 Item 3. _____ 5 _____
 Item 4. _____ 5 _____

5 or more Items:

Application will be deemed incomplete 5 _____

AA. *Match Certification*
 Matching Certification exceeds \$50,000 50 _____

AB. *LDED - Economic Development*
 Project located in a geographic area certified by the Louisiana Department of Economic Development are eligible for points as follows:
 Areas with an Empowerment Zone/Empowerment Community (EZ/EC) designation 20 _____
 Areas showing growth of 50 percent or more in economic indicators determined by LDED 15 _____
 Areas with an EZ/EC Champion Community Designation 10 _____

AC. Phase I Environmental Site Assessment prepared by qualified environmental specialist provided with application 10 _____

Formula to Calculate Ratio of Project's Intermediary Cost to Development Costs:

Step 1: Add following amounts from Appendix II.
 Line II.B (Land Improvements) \$ _____
 Line II.C(ii) (Demolition) \$ _____
 Line II.C(iii) (Rehab or New Construction) \$ _____
 TOTAL: \$ _____

Step 2: Add Following Amounts from Appendix II.
 Line II.D (Subtotal) \$ _____
 Line II.F (Subtotal) \$ _____
 Line II.G (Subtotal) \$ _____
 TOTAL: \$ _____

Step 3: Divide Total of Step II by Total of Step I and specify percentage:

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Housing Finance Agency, LR 19:908 (July 1993), amended LR 21:959 (August 1996), LR 22:717 (August 1996), LR 23:749 (June 1997), LR 24:

Any interested person may submit written comments regarding the contents of the proposed Rule to V. Jean Butler, President, Housing Finance Agency, 200 Lafayette Street, Third Floor, Baton Rouge, LA 70801. All comments must be received no later than 4:30 p.m., July 24, 1998.

V. Jean Butler
 President

**FISCAL AND ECONOMIC IMPACT STATEMENT
 FOR ADMINISTRATIVE RULES
 RULE TITLE: HOME Affordable
 Rental Housing**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 This change will have no measurable impact to State agency fiscal operations.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 This change will have no effect on revenue collections for state or local government.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Developers will be able to more effectively compete for funding in order to better leverage additional financing sources.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect on competition and employment is anticipated as the result of this change.

V. Jean Butler
 President
 9806#051

Richard W. England
 Assistant to the
 Legislative Fiscal Officer

NOTICE OF INTENT

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

**Farm-Raised White-Tailed Deer and Exotics
 (LAC 76:XIX.109)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Wildlife and Fisheries Commission does hereby give notice of intent to adopt rules governing hunting of farm-raised white-tailed deer and exotic deer and antelope.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Title 76

**WILDLIFE AND FISHERIES
 Part XIX. Hunting**

**Chapter 1. Resident Game Hunting Seasons
 §109. Farm-Raised White-Tailed Deer and Exotics**

A. Definitions

Exotics—any animal of the family *Bovidae* (except the *Tribe Bovini* [cattle]) or *Cervidae* which is not indigenous to Louisiana and which is introduced and kept within an enclosure for which a current Farm-Raising License has been issued by the Department of Agriculture and Forestry. *Exotics* shall include, but are not limited to, fallow deer, red deer, elk, sika deer, axis deer, and black buck antelope.

Farm-Raised White-Tailed Deer—any animal of the species *Odocoileus virginianus* which is introduced and kept within an enclosure for which a current Farm-Raising License has been issued by the Department of Agriculture and Forestry.

Same as Outside—hunting within an enclosure must conform to applicable statutes and rules governing hunting and deer hunting, as provided for in Title 56 of the Louisiana

Revised Statutes and as established annually by the Wildlife and Fisheries Commission for the specific geographic area in which the enclosure is located.

B. Hunting Seasons

1. Farm-Raised White-Tailed Deer: same as outside, except still hunt only during all segments.
2. Exotics: year round.
3. A Farm-Raising licensee may kill farm-raised white-tailed deer within the enclosure for which he is licensed at anytime during daylight hours after proper notice is given as required by the Department of Agriculture and Forestry Alternative Livestock Rules.

C. Methods of Take

1. Farm-Raised White-Tailed Deer: same as outside.
2. Exotics:
 - a. exotics may be taken with:
 - i. longbow (including compound bow) and arrow;
 - ii. shotguns not larger than 10 gauge, loaded with buckshot or rifled slug;
 - iii. handguns and rifles no smaller than 22 caliber center-fire;
 - iv. muzzle-loading rifles or pistols, 44 caliber minimum; or
 - v. shotguns 10 gauge or smaller; all of which must load exclusively from the muzzle or cap and ball cylinder, using black powder or an approved substitute only, and using ball or bullet projectile, including sabot bullets only.

D. Shooting Hours

1. Farm-Raised White-Tailed Deer: same as outside.
2. Exotics: one-half hour before sunrise to one-half hour after sunset.

E. Bag Limit

1. Farm-Raised White-Tailed Deer: same as outside.
2. Exotics: no limit.

F. Hunting Permit and Licenses

1. Farm-Raised White-Tailed Deer: same as outside.
2. Exotics: no person shall take or attempt to take any exotic without possessing an Exotic Hunting Permit issued by the Department of Wildlife and Fisheries. An administrative fee of \$50 shall be assessed for each Exotic Hunting Permit. Permits are valid only on the deer farm indicated on the face of the permit. Permits shall be issued on a fiscal year basis beginning July 1 of each calendar year and shall expire on June 30 of the following calendar year.

G. Tagging

1. Farm-Raised White-Tailed Deer: same as outside.
2. Exotics: each exotic shall be tagged in the left ear or left antler immediately upon being killed and before being moved from the site of the kill with a tag provided by the Department of Agriculture and Forestry. The tag shall remain with the carcass at all times.

H. Additional Restrictions. Except as otherwise specified herein, all of the provisions of Title 56 of the Louisiana Revised Statutes and the Wildlife and Fisheries Commission

Rules pertaining to the hunting and possession of white-tailed deer shall apply to farm-raised white-tailed deer and exotics.

I. Prior Declaration of Emergency. This rule will supplant any prior Declaration of Emergency adopted by the Wildlife and Fisheries Commission pertaining to hunting of farm-raised deer and exotics that is in effect on the effective date of this rule.

AUTHORITY NOTE: Promulgated in accordance with Louisiana Constitution, Article IX, Section 7, R.S. 36:601, R.S. 56:115, R.S. 56:171 et seq., and R.S. 56:651 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:

Interested persons may comment on the proposed rule in writing to Hugh Bateman, Administrator, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, Louisiana, 70898-9000, until 4:30 p.m., August 5, 1998.

Thomas M. Gattle, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Farm-Raised White-Tailed Deer and Exotics**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

An outlay of \$105.00 per fiscal year for printing of Exotic Hunting Permits, along with some additional costs involved in handling and issuing of permits and enforcement of regulations will occur. Since this is a new program, the cost of these activities cannot be quantified, but are not expected to be significant. No costs or savings to local governmental units is anticipated.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The amount of revenue collected will depend on the number of permits issued. The permit fee of \$50.00 is to be divided equally among the Department of Wildlife and Fisheries and Department of Agriculture and Forestry. Since this is a new permit, the department is unable to determine the amount of revenue that will be generated at this time.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Deer farmers and their hunting customers will be affected. Deer farmers will have some additional paperwork associated with providing the required Exotic Hunting Permits to their clients. Each Exotic Hunting Permit will have a fee of \$50.00. White-tailed deer hunters who hunt in these enclosures will be required to have appropriate hunting licenses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no significant impact on competition and employment.

Ronald G. Couvillion
Undersecretary
9806#032

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

**Reef Fish—Daily Take and
Size Limits (LAC 76:VII.335)**

The Wildlife and Fisheries Commission does hereby give notice of intent to amend a Rule (LAC 76:VII.335) modifying the recreational bag limit for red snapper, which is part of the existing rule for daily take, possession, and size limits for reef fishes set by the Commission. Authority for amending this Rule is included in R.S. 56:6(25)(a), 56:326.1 and 56:325.3.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

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	Recreational Bag Limits
1. Red Snapper	4 fish per person per day

* * *

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

Interested persons may comment on the proposed rule in writing to Mr. Harry Blanchet, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 until 4:30 p.m., August 4, 1998.

Thomas M. Gattle, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Reef Fish Daily Take and Size Limits

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no state or local governmental implementation costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenues to any state or local governmental units from the proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Rule is intended to provide consistent regulations for recreational fishers harvesting reef fishes in state waters and in adjacent Federal waters.
Reduction in bag limit of these fish may reduce benefits to recreational harvesters. Reduced benefits would occur from fixed trip costs offset by reduced total allowable harvest per day of red snapper, and from differential values of redirected harvested species compared to red snapper. Reduction in the recreational bag limit may make trips aboard some charter vessels less appealing, thereby reducing the income from those trips either through reduced profit per trip, or by reduced number of trips through loss of interested anglers. Marinas, boat launches, and associated industries could have reductions in revenues due to reduced numbers of trips by anglers targeting red snapper. The lower bag limit may extend the season over which anglers are allowed to harvest red snapper, mitigating the per trip losses. Most of these effects would be due to the existence of these rules in Federal waters rather than State waters, as most fishing activity toward red snapper occurs in Federal waters. Overall benefit reductions are not estimable at this time. Long-term benefits may also accrue to fishermen in both recreational and commercial sectors as a result of possible increases in the stocks protected by the proposed limits. No additional costs, permits, fees, workload or paperwork will occur from the proposed rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be little or no effect on employment in the public or private sector. Some harvesters may redirect their fishing efforts to other species, geographic areas, or into non-fishing activities.

Ronald Couvillion
Undersecretary
9806#033

Richard W. England
Assistant to the
Legislative Fiscal Officer