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# EXECUTIVE ORDERS

## EXECUTIVE ORDER 94-2

WHEREAS: the problem of sexual abuse of children unfortunately plagues the society of the nation, including this state; and

WHEREAS: the Louisiana Legislature recently enacted Act No. 694 of the 1993 Regular Legislative Session in order to facilitate the prosecution of those charged with sexual abuse of a minor; and

WHEREAS: various communities and entities of the state, including the criminal justice system, the Louisiana bar, the justice department, the therapeutic community, the social service agencies, the academic community, and others, are impacted by the sexual abuse of children and the prosecution of those who commit such acts; and

WHEREAS: the state of Louisiana would greatly benefit from a task force addressing the sexual abuse of minors which would, in particular, develop a common protocol among impacted communities and entities for the handling of child sexual abuse cases, in furtherance of the spirit of Act No. 694 of the 1993 Regular Legislative Session; and

NOW, THEREFORE, I, EDWIN W. EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested in me by the Constitution and laws of the state of Louisiana, do hereby establish the Louisiana Task Force on the Sexual Abuse of Minors, and do hereby order and direct as follows:

SECTION 1: the Louisiana Task Force on the Sexual Abuse of Minors is established and created within the Executive Department, Office of the Governor.

SECTION 2: The Louisiana Task Force on the Sexual Abuse of Minors, hereinafter "Task Force", shall be composed of eleven members to be appointed by the governor.

SECTION 3: The members shall serve at the pleasure of the governor.

SECTION 4: The governor shall appoint a chairperson who is a member of the Task Force. The Task Force may elect other officers as it deems necessary.

SECTION 5: The members of the Task Force shall receive no per diem or other compensation for their services. Actual expenses incurred by the members of the Task Force in the performance of their official duties may be reimbursed upon the approval of the Commissioner of Administration.

SECTION 6: The duties and function of the Task Force shall include, but shall not be limited to, the following:

1. conducting a review of the present protocol in all affected entities for the handling of cases involving the sexual abuse of minors;

2. developing a streamlined and unified protocol for all affected entities in the handling of cases involving the sexual abuse of minors;

3. establishing a system of training and education for all persons involved in servicing cases involving the sexual abuse of minors;

4. presenting a preliminary report on their findings to the governor six months from the execution of this order and presenting a final report on their findings and recommendations to the governor two years from the execution of this order.

5. Any other duties and functions as required by the governor in order to facilitate the implementation of Act 694 of the 1993 Regular Legislative Session.

SECTION 7: All department, commission, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Task Force in implementing the provisions of this Executive Order.

SECTION 8: The provisions of this Executive Order shall be effective upon signature and shall remain in effect until amended, modified, or rescinded by operation of law.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the capitol, in the city of Baton Rouge, on this 7th day of January, 1994.

Edwin Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State

# EMERGENCY RULES

## DECLARATION OF EMERGENCY

Department of Agriculture and Forestry  
Office of Animal Health Services  
Livestock Sanitary Board

Disposal of Dead Poultry

In accordance with R.S. 49:953(B), the commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act in connection with the issuance of rules which provide for the disposal of dead poultry.

The purpose of the following emergency rule is to avoid imminent peril to the welfare of the citizens of the state. Sudden death of massive numbers of poultry due to increased ambient temperatures, smothering, and other

nondisease related causes is a potential problem facing poultry growers yearly. These growers need a method of disposing of these birds that their normal disposal systems are not capable of handling due to volume. This emergency rule will provide a method of disposal of these poultry in the event there is a higher than normal death loss and shall be effective for 120 days.

#### Emergency Rule

In the event of the death of more than 1 percent of broilers or 0.5 percent of pullets or breeders over four weeks of age on the same premises within a 24-hour period of time, the death of which is not known to be caused by a contagious or infectious disease, the dead poultry may be disposed of by on-site burial.

The state veterinarian's office must be notified immediately by telephone or facsimile in the event of excessive mortality requiring on-site burial.

Bob Odum  
Commissioner

### DECLARATION OF EMERGENCY

#### Department of Economic Development Motor Vehicle Commission

#### Brokers of New and Unused Motor Vehicles (LAC 46:V.1801 and 1802)

In accordance with the Administrative Procedure Act, particularly R.S. 49:953(B), and R.S. 32:1253(E), the Department of Economic Development, Motor Vehicle Commission adopts LAC 46:V.1801 and 1802 through a declaration of emergency, effective February 20, 1994. This emergency rule shall remain in effect for 120 days or until promulgation of a final rule, whichever occurs first.

The Motor Vehicle Commission is charged with enforcing the Louisiana Motor Vehicle Law, R.S. 32:1251 et seq., in which the Legislature established a very comprehensive scheme of regulating the sale of new and unused automobiles in the state of Louisiana. A review of Section 1251 shows the purpose of this law is very broad and was enacted, in particular, to protect the public interest.

In that regard, the Motor Vehicle Commission has, throughout its history, prohibited brokering of new cars, with a broker being defined as a person who advertises for clients who wish to purchase new vehicles, and, upon being contacted by the client, the broker enters into an agreement whereby the broker, for a fee, acts for and on behalf of the client in finding and obtaining a motor vehicle.

Brokering has been prohibited because of the potential for abuse to the motoring public. In the past, this agency has found instances of persons attempting to broker and, in addition to the fee charged the client, the broker also received an undisclosed fee from the dealer. In other situations we have found total nondisclosure by the person acting as a

broker as to the nature of or the amount of their fees. Under these circumstances, the consumer does not have the benefit of the knowledge of the licensed dealer concerning the automobile, warranties, and other matters of which he should be informed in making an intelligent purchase. Studies by various manufacturers show that consumers do not get a better deal by using a broker.

The attorney general has, on two occasions, been called upon to interpret the statute with regard to brokering. The first request for an opinion came in 1968 at the request of the law firm of Nelson, Ormond and Nelson, and in an opinion dated June 27, 1968, the attorney general opined that brokering of automobiles as described herein was illegal. A second opinion was issued on April 30, 1987, Opinion No. 87-302, and the same result was reached.

Based on these opinions, the Motor Vehicle Commission has prohibited brokering for more than 25 years, and the fact that brokering was prohibited in this state went essentially unquestioned. However, in the past few months the opinions of the attorney general have been attacked, particularly with regard to the definition of a broker, and the commission believes that in order to properly carry out its mission to protect the public interest, this emergency rule is necessary to clearly state the definition and the type of activity that has always been prohibited.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part V. Automotive Industry

#### Subpart 1. Motor Vehicle Commission

#### Chapter 18. Brokers of New and Unused Motor Vehicles

#### §1801. Motor Vehicle Brokers

A person may not act as, offer to act as, or hold itself out to be a broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Motor Vehicle Commission, LR 20:

#### §1802. Definitions

*Broker*—a person who, for any fee, commission, or other valuable "consideration," arranges or offers to arrange a transaction involving the sale of a new and unused motor vehicle and who is not:

1. a dealer or bona fide agent or employee of a new motor vehicle dealer;
2. a representative or bona fide agent or employee of a manufacturer, factory branch or factory representative, distributor, distributor branch or distributor representative of new motor vehicles; or
3. at any point in the transaction, the bona fide owner of the vehicle involved in the transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253(E).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Motor Vehicle Commission, LR 20:

Robert W. Benson, Jr.  
Chairman

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Bulletin 741—Handbook for School Administrators, Minimum Standards for Vocational Education

The State Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R. S. 49:953(B) and adopted as an emergency rule, the following revision to Standard 1.124.03 of Bulletin 741, Louisiana Handbook for School Administrators.

#### Standard 1.124.03

To qualify for recommendation to take the General Educational Development (GED) Test, a student shall be a veteran or member of the Armed Forces or shall enroll in an adult education program and take the California Achievement Tests or the Test of Adult Basic Education at the high school level. An average score of 12.9, with no subject matter area below 12.0, shall be attained by the individual to be authorized to take the General Educational Development (GED) Test.

Emergency adoption is necessary in order that the staff of the local program can select the test and test materials as early as possible to allow payment for them with funds designated for that purpose in the 1993-94 fiscal year budget. Effective date of emergency rule is March 1, 1994.

Carole Wallin  
Executive Director

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Bulletin 1706—Regulations for Implementation of the Exceptional Children's Act

The State Board of Elementary and Secondary Education exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and re-adopted as an emergency rule, Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act, effective November 1, 1993, except for an amendment to page 119, Part B.1.F.2 of the Bulletin. That revision appeared on page 1285 of the October, 1993 issue of the *Louisiana Register* as an emergency rule. Re-adoption of this Bulletin is necessary in order to continue the present emergency rule until it is finalized as a rule. Effective date of this emergency rule is March 1, 1994, for 120 days or until the final rule takes effect whichever occurs first.

Bulletin 1706 contains statewide rules and regulations enforcing the requirements of state and federal laws which assure a free, appropriate public education to all exceptional children, ages three through 21 years. Responsibilities of state and local public and nonpublic educational agencies are given.

Bulletin 1706 may be seen in its entirety in the Office of the

State Register, 1051 North Third, Capitol Annex, Suite 512, Street, Baton Rouge, LA; in the Office of Special Educational Services, State Department of Education, and in the Office of the State Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge, LA.

Carole Wallin  
Executive Director

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Bulletin 1903—Dyslexic Students

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedures Act R. S. 49:953(B) and readopted as an emergency rule, a revision to Bulletin 1903, Guidelines for the Implementation of the Louisiana Law for the Education of Dyslexic Students to add "No child shall be screened if his parent or guardian (tutor) objects to such screening" under Step One of the Guidelines and as noted below.

This amendment is based on language which appears in R.S. 17:392.1(B) and is readopted as an emergency rule in order to continue the present emergency rule until it is finalized as a rule. This emergency rule was previously published on page 1395 of the November, 1993 issue of the *Louisiana Register*. Effective date of emergency rule is February 28, 1994.

#### Step One. Date Gathering, Screening, and Review

##### I. Request for Assistance by the School Building Level Committee

A. A request may be made to the school building level committee for review of a student's educational progress if school personnel (principal, guidance counselor, teacher, school nurse), a parent/guardian, community agency personnel, or a student has reason to believe that the student is not making expected progress because of a suspected language processing disorder. No child shall be screened if his parent or guardian (tutor) objects to such screening. This request begins the 60 day timeline. The committee membership may be modified in order that a group of knowledgeable persons may address an individual student's needs.

Carole Wallin  
Executive Director

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Interim Policy for Hiring Full-Time/Part-Time Noncertified School Personnel

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act R.S. 49:953(B) and readopted as an emergency rule, the Interim Policy for Hiring Full-Time/Part-Time Noncertified School Personnel. These revisions are being readopted as an emergency rule in order to continue the present emergency rule until it is finalized as a rule. This policy was previously adopted as an emergency rule and printed in full in the November, 1993 issue of the *Louisiana Register*. Effective date of this emergency rule is February 28, 1994.

#### Interim Emergency Policy for Hiring Full-Time/Part-Time Noncertified School Personnel

In an effort to assist local education agencies experiencing extreme difficulty in providing certified personnel for the classroom, the following Interim Emergency Policy is proposed:

Full-time/part-time noncertified school personnel, excluding speech, language, and hearing specialists, may be employed by parishes having difficulty in employing certified persons in certain positions, provided that the following documentation is submitted to the Department of Education:

1. a signed affidavit by the local superintendent that the position could not be filled by a certified teacher;
2. submission of names, educational background, subject matter and grade level being taught as an addendum to the Annual School Report; and

Documentation kept on file in the LEA's Superintendent's/Personnel Office shall include:

1. copies of transcripts showing the degree earned;
2. documentation that efforts for recruitment of certified teachers have been made (e.g., newspaper advertisements, letters, contacts with colleges, and so forth);
3. documentation that the teacher is eligible for admission to a teacher education program.

In addition:

1. It is required that these teachers take the NTE at the earliest date that it is offered in their geographical area; and
2. These individuals must have a minimum of a baccalaureate degree from a regionally accredited institution and be eligible for admission to a teacher education program.
3. To be re-employed under this policy, an individual must have earned at least six semester hours toward completion of a teacher education program or six semester hours appropriate to the area of the NTE (General Knowledge, Professional Knowledge, Communication Skills, Specialty Area) in which the score was not achieved.
4. Effective with the 1992-93 school year, the total number of years a person may be employed according to the provisions of this policy, inclusive of experience prior to 1992-93, is five years.

5. These individuals shall be employed at a salary that is based on the effective state salary schedule for a beginning teacher with a baccalaureate degree and a certificate with zero years of experience. Local salary supplements are optional.

6. Copies of transcripts showing the six semester hours and a copy of the NTE score card showing the NTE has been taken since the last employment under this policy shall be kept on file in the LEA's Superintendent's/Personnel Office.

7. To be eligible for re-employment under this policy, a teacher who has not met the requirement of earning six semester hours of college credit or who has not taken the NTE must meet one or more of the following conditions:

a. Medical Excuse. When serious medical problems of the teacher or immediate family in the same household exist, a doctor's statement is required with a letter of assurance from the superintendent and teacher that the hours will be earned.

b. Required Courses Not Available. A letter of verification from area universities is required stating that the required courses are not being offered.

c. Change of School, Parish or School System. A justification letter from the superintendent is required. Reissuance is permitted only if the change is not part of a continuous pattern.

d. Change of Certification Areas. A letter of justification from the superintendent is required to explain the new job assignment with assurance that the requirements for continued employment under this policy will be met.

e. Courses Not Applicable toward Certification. A letter of justification from the superintendent is required with assurance that the teacher will become enrolled in the proper program.

(These are the only conditions that may be used. Documentation which supports the above condition must be maintained in the teacher's personnel file.)

This interim emergency policy will remain in effect until July 1, 1995.

Carole Wallin  
Executive Director

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Temporary Employment Permits (LAC 28:I.903)

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and readopted, as an emergency rule, the revised policy on Temporary Employment Permits for inclusion in Bulletin 746, Louisiana Standards for State Certification of School Personnel. The revisions incorporate the provisions of Act 914 of the 1993 Louisiana Legislature and were printed in full as an emergency rule on page 1397 in the November, 1993 issue of the *Louisiana Register*. Readoption as an emergency rule is necessary in

order to continue the present emergency rule until it is finalized as a rule. Effective date of this emergency rule is February 28, 1994, for 120 days.

### Temporary Employment Permits

A temporary employment permit, valid for one school year, will be granted to those candidates who meet the qualifying scores on the revised NTE in three out of four modules and whose aggregate score is equal to or above the total score on all four modules required for standard certification. All other standard certification requirements must be met.

When no area examination is required, a temporary employment permit will be granted to candidates who meet qualifying scores in two out of three modules of the Core Battery and whose aggregate score is equal to or above the total score on all three modules of the Core Battery required for certification. All other standard certification requirements must be met.

To employ an individual on a temporary employment permit, a local superintendent must verify that no regularly certified teacher is available for employment. Names of the individuals employed on a temporary employment permit are to be listed on the addendum to the Annual School Report with verification that no regularly certified teacher is available.

An individual can be reissued a permit three times under the board policy only if evidence is presented to the State Department of Education that the NTE has been retaken within one year from the date the permit was last issued. Beginning with the fifth year, to receive a Temporary Employment Permit, an individual must present the following:

1. evidence that the NTE has been taken within one year from the date the permit was last issued;
2. verification from the employing superintendent that the individual is applying for employment in a specific teaching position for which there is no regularly certified teacher available;
3. a recommendation from the employing superintendent;
4. verification of successful local evaluations for the previous four years.

Temporary employment permits will be issued at the request of individuals who meet all requirements for regular certification with the exception of the NTE scores. All application materials required for issuance of a regular certificate must be submitted to the Bureau of Higher Education and Teacher Certification with the application for issuance of a temporary employment permit.

This will also be an amendment to LAC 28:I.903 as noted below:

## Title 28 EDUCATION

### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §903. Teacher Certification Standards and Regulations

\* \* \*

#### C. Temporary Employment Permits—repealed

\* \* \*

Carole Wallin  
Executive Director

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Temporary Teaching Assignments

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and readopted as an emergency rule, the following revisions to the Regulations, Policies, and Procedures for Granting Temporary Teaching Assignments for inclusion in Bulletin 746, Louisiana Standards for State Certification of School Personnel. Readoption is necessary in order continue the present emergency rule until it is finalized as a rule. Effective date of emergency rule is February 28, 1994. The emergency rule was previously published on page 1398 of the November, 1993 issue of the *Louisiana Register*.

#### Temporary Teaching Assignments

Local school systems and diocesan systems shall have the authority to grant Temporary Teaching Assignments. A Temporary Teaching Assignment, valid for one school session only and the summer immediately following the school year, and authorizing the employment of a specified teacher in a position for which he is not regularly certified, may be issued by the employing superintendent according to the following regulations:

1. For public schools, the local superintendent must sign the following statement on each Temporary Teaching Assignment:

"I hereby certify that there is no regularly certified, competent, and suitable person available for this position and that the applicant named above is the best qualified person available for employment in the position herein above described."

2. A Temporary Teaching Assignment may be made only for persons who have a baccalaureate degree.

3. Teachers in public schools, and special education teachers in nonpublic schools, who do not have a regular Louisiana teaching certificate must have the appropriate scores on the NTE and be eligible for admission to an approved teacher education program.

4. Renewals may be made on a yearly basis. To be eligible for reemployment on a Temporary Teaching Assignment, a minimum of six semester hours of resident or extension credit must be earned. The hours must be applicable toward certification in the area in which the Temporary Teaching Assignment was approved.

5. Temporary Teaching Assignments shall be made on forms prescribed by the State Department of Education.

6. The local school system and diocesan systems shall be responsible for maintaining files on all Temporary Teaching Assignments.

7. A Temporary Teaching Assignment may be reissued by a local school system or diocesan system to an applicant who has not met the requirement of earning six semester hours of college credit when one or more of the following conditions are met:

A. Medical Excuse. When serious medical problems of the teacher or immediate family in the same household exist, a doctor's statement is required with a letter of



assurance from the superintendent and teacher that the hours will be earned.

B. Required Courses Not Available. A letter of verification from area universities is required stating that the required courses are not being offered.

C. Change of School, Parish or School System. A justification letter from the superintendent is required. Reissuance is permitted only if the change is not part of a continuous pattern.

D. Change of Certification Areas. A letter of justification from the superintendent is required to explain the new job assignment with assurance that the requirements for the next Temporary Teaching Assignment will be met.

E. Courses not applicable toward certification. A letter of justification from the superintendent is required with assurance that the teacher will become enrolled in the proper program.

These are the only conditions that may be used. Documentation which supports the above condition must be maintained in the teacher's personnel file. (The Bureau of Higher Education and Teacher Certification will use the same criteria for issuing TTAs to teachers in private schools.)

8. The local school systems and diocesan systems shall be accountable for all aspects of this program.

9. The State Department of Education shall monitor the implementation of the regulations for Temporary Teaching Assignments.

*Note:* Private, nondiocesan schools must apply to the State Department of Education, Bureau of Higher Education and Teacher Certification for a Temporary Teaching Certificate. The regulations listed above which apply to nonpublic schools are also applicable for private, nondiocesan schools.

Carole Wallin  
Executive Director

## DECLARATION OF EMERGENCY

Department of Environmental Quality  
Office of the Secretary

Notification Requirements for Unauthorized Discharges with  
Groundwater Contamination Impact  
(LAC 33:I.3919,3925) (OS17E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the Secretary of the Department of Environmental Quality declares that an emergency action is necessary due to the repeal of existing regulations requiring notification for unauthorized discharges to the groundwaters of the state. It is necessary for the department to adopt this emergency rule to reinstate the requirements for notification of unauthorized discharges to groundwater. The following emergency rule is hereby adopted to carry out the intent of the Legislature which is to insure that the environment and the health of the citizens of this state are not endangered by impact to groundwater as a result of such unauthorized

discharges. The immediate effect of this rule is twofold: 1) to reinstate the regulatory requirements for notification of unauthorized discharges to the groundwaters of the state which were inadvertently repealed; and 2) to insure that the state's groundwaters are adequately protected.

This emergency rule is effective on February 17, 1994, and shall remain in effect until the final rule is promulgated, which is expected to be February 20, 1994.

### Title 33

## ENVIRONMENTAL QUALITY

### Part I. Office of the Secretary

#### Subpart 2. Notification Regulations

### Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

#### Subchapter C. Requirements for Prompt Notification

### §3919. Notification Requirements for Unauthorized Discharges with Groundwater Contamination Impact

In the event that any unauthorized discharge results in the contamination of the groundwaters of the state, the discharger shall notify the appropriate division(s) in the department, in writing, in accordance with LAC 33:I.3925 within seven calendar days after obtaining knowledge of the discharge.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), R.S. 30:2076(D), 30:2183(I), and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and amended LR 20:

### §3925. Written Notification Procedures for the Department of Environmental Quality

A. Written reports for any unauthorized discharge that requires verbal notification under LAC 33:I.3915.A or 3917, or that requires written notification under LAC 33:I.3919, will be submitted by the discharger to the department in accordance with this Section within seven calendar days after the telephone notification required by LAC 33:I.3915.A or 3917, or within seven calendar days after obtaining knowledge of the groundwater discharge as required by LAC 33:I.3919, unless otherwise provided in a valid permit or other division regulations.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), 30:2194(C) and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:

James B. Thompson, III  
Assistant Secretary

## DECLARATION OF EMERGENCY

Office of the Governor  
Division of Administration  
Office of Contractual Review

### Retroactive Claims Recovery Services (LAC 34:V.103)

In accordance with R.S. 49:953(B) of the Administrative Procedure Act, and R.S. 39:1490(B), the Office of the Governor, Division of Administration, Office of Contractual Review declares a declaration of emergency, effective March 2, 1994, to amend LAC 34:V.103, affecting the procurement of consulting services contracts. This emergency rule shall remain in effect for 120 days or until it takes effect through the normal promulgation process, whichever occurs first.

The purpose of this emergency rule amendment is to provide for the procurement of Retroactive Claims Recovery Services through a request for proposal, in accordance with R.S. 39:1503, to comply with federal requirements for the collection of third-party liability claims for medical services performed by the Department of Health and Hospitals and the Louisiana Health Care Authority. The current contractual services terminate December 31, 1993, and conflicts existing as to the appropriate procedure will not allow the contracts to be in place by this time to avoid possible budget deficits, or sanctions or penalties by the United States if these agencies do not have contracts to collect these monies. An emergency rule regarding this amendment was previously adopted, became effective on November 1, 1993, for 120 days, and was published in the November 20, 1993 *Louisiana Register*, pages 1405-1406.

This emergency rule is also being proposed for adoption in the Notice of Intent Section of this February 20, 1994 issue of the *Louisiana Register*.

#### Title 34

### GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

#### Part V. Procurement of Professional, Personal, Consulting and Social Services

#### Chapter 1. Procurement of Professional, Personal, Consulting and Social Services

#### Subchapter A. General Provisions

#### §103. Definitions and Classes of Contractual Services

The following services shall be contracted out in accordance with these regulations:

##### A. - B. ...

C. *Consulting Service*—work, other than professional, personal or social service, rendered by an independent contractor who possesses specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis, or advice in formulating or implementing programs or services or improvements in programs or services, including, but not limited to, such areas as management, data processing, advertising and public relations. *Consulting Services* includes the procurement of supplies and services by a contractor without the necessity of complying with provisions of the Louisiana Procurement Code when such supplies and services

are merely ancillary to the provisions of consulting services under a contingency fee arrangement, even though the procurement of supplies or services directly by a governmental body would require compliance with the Louisiana Procurement Code. Supplies or services ancillary to the provision of consulting services are those supplies or services which assist the contractor in fulfilling the objective of his contract where the cost for such supplies and services, as determined by the using agency. No contract for consulting services as defined in Subsection C of §103 this Paragraph shall be entered into unless it has been approved in advance by the Joint Legislative Committee on the Budget.

*Retroactive Claims Recovery Services*—are those consulting services where third party coverage identification and verification represent the primary services, and any operations type activities such as data processing and/or claims submission are merely incidental to the total work tasks to be performed, and where such services will result in revenue enhancement to the state through a contingency fee arrangement. The RFP process for this type of consulting service shall require that at least 50 percent of total weighted criteria for evaluation be allocated to cost.

##### D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:455 (June 1984), amended LR 17:264 (March 1991), LR 20:

Susan H. Smith  
Director

## DECLARATION OF EMERGENCY

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

### Disproportionate Share Methodologies for Inpatient Hospital Services

The Department of Health and Hospitals, Office of Management and Finance, Bureau of Health Services Financing, has adopted the following emergency rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) and is effective February 1, 1994 for 120 days.

The Medicaid program currently reimburses hospitals serving a disproportionate share of low income patients via three pools with payments based on Medicaid days. These pools based on Medicaid days are acute care teaching hospitals, acute care non-teaching hospitals, and distinct part psychiatric units/free-standing psychiatric hospitals. This payment methodology was implemented effective March 1, 1993 by means of emergency rulemaking to ensure compliance with the state cap on disproportionate share payments as a

result of Public Law 102-234 and federal regulations published November 24, 1992. A notice of intent was published on April 20, 1993 and a rule was adopted on November 20, 1993, *Louisiana Register*, Volume 19, Number 11. In addition, disproportionate share payments for indigent care based on free care days were made by establishment of an additional disproportionate share indigent pool via emergency rulemaking originally adopted on January 1, 1993 and then continued in force through the adoption of subsequent emergency rules published in the April, September, and December 20, 1993 issues of the *Louisiana Register*. A notice of intent on the indigent payment methodology was published in the April 20, 1993 issue of the *Louisiana Register* and public hearings were held on May 25, 1993 and on January 25, 1994.

The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) amended Section 1923 (Adjustment in Payments for Inpatient Hospital Services Furnished by Disproportionate Share Hospitals) of the Social Security Act (42 U.S.C. Section 1396r-4) by establishing individual hospital disproportionate share payment limits. Therefore the bureau is restructuring its disproportionate share payment methodology to address a fiscal crisis and to comply with the Health Care Financing Administration's policy on this federal statute. This restructuring incorporates provisions that will: establish pools and specify the qualifying criteria for each pool, limit indigent per diem payments to each hospital's total Medicaid per diem equivalent amount, allow the director of the Bureau of Health Services Financing to adjust original pool amounts within the federal fiscal year, allow the bureau to issue the disproportionate share pool amounts in multiple payments, and establish a reconciliation pool to provide disproportionate share reimbursement to providers qualifying for disproportionate share payments that have either entered the program or have qualified for disproportionate share payments subsequent to the March 31, 1993 pool base.

The following emergency rule revises the disproportionate share payment methodologies for Medicaid days and indigent care days and also establishes a reconciliation pool payment methodology. It amends the November 20, 1993 rule on Medicaid days payment methodology and supersedes the current emergency rule on indigent care days payment methodology adopted on December 27, 1993.

It is anticipated that these changes will have no impact on aggregate annual disproportionate share expenditures.

#### Emergency Rule

Effective February 1, 1994, the Department of Health and Hospitals, Bureau of Health Services Financing is amending its methodologies for calculating disproportionate share payments for inpatient hospital services. Below are the following revised methodologies as modified in the State Plan, Attachment 4.19-A Items 1, 14, and 16 - Methodology for Disproportionate Share Adjustments.

#### DISPROPORTIONATE SHARE PAYMENTS—MEDICAID DAYS POOL PAYMENTS

Hospitals which meet the qualification criteria outlined in Item 1, D. 1. a-d, based on the latest filed fiscal year end cost report as of March 31 of each year shall be included in one of

the 12 following pools for calculation of disproportionate share payments. These 12 pools are as follows:

1) *Public State-Operated Teaching Hospitals*—state-operated acute care general hospitals (exclusive of distinct part psychiatric units) recognized as approved teaching hospitals under criteria established by the secretary of the Department of Health and Hospitals.

2) *Public State-Operated Non-teaching Hospitals*—state-operated acute care general hospitals (exclusive of distinct part psychiatric units) not recognized as approved teaching hospitals under criteria established by the secretary of the department.

3) *Public State-Operated Teaching Psychiatric Units/Freestanding Psychiatric Hospitals*—state-operated psychiatric units/freestanding psychiatric hospitals which meet the criteria for recognition as teaching hospitals under criteria established by the secretary of the department.

4) *Public State-Operated Non-teaching Psychiatric Units/Freestanding Psychiatric Hospitals*—state-operated psychiatric units/freestanding psychiatric hospitals which do not meet the criteria for recognition as teaching hospitals under criteria established by the secretary of the department.

5) *Public Local Government Acute Hospitals*—local government owned acute care general hospitals (exclusive of distinct part psychiatric units).

6) *Public Local Government Psychiatric Units/Freestanding Psychiatric Hospitals*—local government owned psychiatric units/freestanding psychiatric hospitals

7) *Private Rural Acute Hospitals*—privately owned acute care general hospitals which are designated as a rural hospital under criteria established by the secretary of the department.

8) *Private Rural Psychiatric Units/Freestanding Psychiatric Hospitals*—privately owned psychiatric units/freestanding psychiatric hospitals which are located in a rural area under criteria established by the secretary of the department.

9) *Private Teaching Hospitals*—privately owned acute care general hospitals (exclusive of distinct part psychiatric units) which are recognized as approved teaching hospitals under criteria established by the secretary of the department.

10) *Private Urban Non-teaching Hospitals*—privately owned acute care general hospitals (exclusive of distinct part psychiatric units) which are designated as urban hospitals and not recognized as approved teaching hospitals, under criteria established by the secretary of the department.

11) *Private Teaching Psychiatric Units/Freestanding Psychiatric Hospitals*—privately owned psychiatric units/freestanding psychiatric hospitals which meet the criteria for recognition as approved teaching hospitals, under criteria established by the secretary of the department.

12) *Private Urban Non-teaching Psychiatric Units/Freestanding Psychiatric Hospitals*—privately owned psychiatric units/freestanding psychiatric hospitals which are located in an urban area and do not meet the criteria for recognition as approved teaching hospitals, under criteria established by secretary of the department.

Hospitals qualifying as of March 31 of each year under the provisions in the approved state plan with fiscal year-end cost

reports which do not reflect 12 months of cost report data shall have Medicaid days annualized by the bureau for purposes of the above pools. All days included in the pool will be weighted by a factor of 1.0. This includes days for hospitals that were previously recognized as "Medicaid dependent hospitals" and a factor of 1.25 was used.

Disproportionate share payments for each pool shall be calculated based on the product of the ratio determined by dividing each qualifying hospital's total Medicaid inpatient days for the applicable cost report as adjusted for annualization by the total Medicaid inpatient days provided by all such hospitals in the state qualifying as disproportionate share hospitals in their respective pools and then multiplied by an amount of funds for each respective pool to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient hospital days include Medicaid nursery days, but do not include SNF or swing-bed days.

The initial payment based on the above Medicaid pools shall be made in February 1994. Subsequent payments shall be made on dates as determined by the secretary of the Department of Health and Hospitals.

#### DISPROPORTIONATE SHARE PAYMENTS—INDIGENT CARE (FREE CARE)

In addition to the 12 pools based on Medicaid days described above, the bureau will continue to reimburse qualifying hospitals an additional disproportionate share adjustment payment based on the hospital's number of indigent care days provided under a indigent care plan approved by the bureau. Payment(s) shall be made during the federal fiscal year to qualifying disproportionate share hospitals for indigent care days based on the following criteria.

1) The indigent disproportionate share adjustment per diem payment will be limited to each hospital's total Medicaid per diem equivalent amount. The Medicaid per diem equivalent amount is the sum of the provider's base Medicaid per diem (cost based or prospective, as applicable) plus the provider's Medicaid disproportionate share per diem as established according to the Medicaid DSH pool in which the facility participates. For Federal Fiscal Year 94, the Medicaid per diem amount will be each hospital's Medicaid per diem amount in effect as of March 1, 1994 and the Medicaid DSH pool per diem amount paid in accordance with the revised February 1994 pool amounts. For subsequent federal fiscal years, the Medicaid per diem amount will be the Medicaid per diem amount in effect the previous July 1st and the Medicaid DSH pool per diem amount as established for the federal fiscal year.

2) Qualifying disproportionate share hospitals shall submit documentation of indigent care days provided during a state fiscal year within 120 days of the end of the state fiscal year in a format specified by the state and shall maintain documentation for all indigent care determinations for the same period Medicaid records for qualification for disproportionate share adjustment are maintained.

3) The department's indigent care plan criteria for recognition of indigent days in the indigent pool for additional disproportionate share payments are delineated below:

a) The annual family income for patients qualifying for

indigent care may not exceed 200 percent of the Federal Poverty Income Guidelines for the period of time in which the services were provided.

b) The facility must advise the public of the availability of indigent care services and of its policies for qualifying patients for indigent care. The facility must post a written copy of its policy conspicuously in all patient treatment areas, admissions and provide individual written notices to patients and/or their family members upon admission.

c) The facility must provide a form for individuals to apply for indigent care services upon admission to the facility. These forms must be maintained on file and be available for audit in accordance with all state and federal rules and regulations. The application must be signed by the applicant except for patients deemed mentally unstable by the physician and for which access for interview has been restricted by physician's orders. The facility must supply auditors with facility's procedures for verification of available payment sources for such patients. Medicaid eligibility resources must be demonstrated to have been exhausted (i.e. application denied) for recognition as an indigent care patient.

d) The facility must make a determination of the patient's eligibility for indigent care services within two working days after application, notify the patient properly of the decision, and keep a copy on file for audit in accordance with state and federal rules and regulations. Income verification should be attempted via review of pay stubs, W-2 records, unemployment compensation book, or collateral contact with employer etc. If income verification has not been completed within two working days, the facility may condition the determination of eligibility on income verification. The facility may also condition the determination of indigent care eligibility on application for Medicaid eligibility. The conditional determination must be completed within two working days of the request for indigent care. The facility must supply documentation that Medicaid eligibility was denied.

e) The facility must maintain a log of indigent care services provided each fiscal year for audit purposes in compliance with state and federal rules and regulations. Patient identifying information such as patient name, social security number, date of birth, dates of service, medical record number, patient account number, number of free care days, and amount of indigent care charges must be included on the log.

f) An indigent day may be included in the indigent care days count only to the extent that the entire day is deemed to be an indigent care day. If indigence is determined on a sliding scale which is based on total charges, any day for which the patient is liable for more than 50 percent of the charges may not be considered as an indigent care day. Inpatient days denied for Medicaid recipients who had exhausted their Medicaid inpatient days may be recognized as indigent days provided that documentation of the reasons for denial demonstrates that the recipient is over the limit of days. Medicaid days denied for other reasons resulting from failure to comply with Medicaid policies and procedures will not be recognized as indigent days. Prisoners receiving

services in state hospitals are deemed indigent in accordance with state law. Inpatient days paid by Medicaid are not recognized as indigent days. Nor are Hill-Burton days that are utilized to meet an obligation under this program recognized as free care days. Medicare bad debt days are not allowable as indigent days. Days for accounts written off as bad debt are not allowable as indigent days.

g) For state-operated facilities an indigent care plan promulgated and implemented in accordance with state law and regulations shall be recognized in lieu of the above criteria for determining indigent care days eligible for disproportionate share payments.

If audit of the data submitted for indigent care days results in the hospital not meeting the disproportionate share qualification provisions in the approved state plan or the number of indigent inpatient days are reduced from those originally reported, appropriate action shall be taken to recover such overpayments. No additional payments shall be made if an increase in indigent days is determined.

**DISPROPORTIONATE SHARE PAYMENTS—  
RECONCILIATION POOL PAYMENTS**

The bureau will also establish a reconciliation pool to provide DSH reimbursement to new or newly qualified DSH providers that qualified for DSH payments subsequent to the March 31, 1993 pool base. The amount of this pool will be determined by March 31, 1994. The total reconciliation pool will be distributed to providers that have qualified for DSH payments subsequent to the March 31, 1993 pool base for the period of time covered by this pool base. Disproportionate share payments for the reconciliation pool shall be calculated based on the product of the ratio of each qualifying hospital's total Medicaid and indigent inpatient days divided by the total Medicaid and indigent inpatient days provided by all such hospitals in the state qualifying for inclusion in this pool. Annualization of days will not be permitted for purposes of this pool. Payments from the reconciliation pool shall only be for dates of service for which the provider met the qualification criteria for disproportionate share payments during the period March 1, 1993 through February 28, 1994.

Disproportionate share payments cumulative for all DSH payments under the pools or any other DSH payment methodology shall not exceed the federal disproportionate share state payment cap for each federal fiscal year.

Disapproval of any one or two of these payment methodology(ies) by the Health Care Financing Administration does not invalidate either one or two of the remaining methodology(ies).

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this emergency rule and providing information regarding a public hearing. Copies of this rule and all other Medicaid rules and regulations are available at parish Medicaid offices for review by interested parties.

Rose V. Forrest  
Secretary

## DECLARATION OF EMERGENCY

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

### Facility Need Review—Solicitation of Offers

The department has adopted the following rule in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to R.S. 40:2116. The rules governing the facility need review process, as originally published in the January 20, 1991 issue of the *Louisiana Register* (Vol. 17, No. 1, pages 61-67) and in subsequent volumes as required by amendments thereto, are being amended. Amendments which generally address the provisions of this rule were adopted through emergency rulemaking on November 1, 1993, and were published in the November 20, 1993 issue of the *Louisiana Register* (Vol. 19 No. 11). A notice of intent was published in the *Louisiana Register* on December 20, 1993 (Vol. 19, No. 12, pages 1627-1628). The following emergency rule is being adopted to continue in force the amendments to the current rule governing the facility need review process effective March 1, 1994, for 120 days or until the final rule takes effect whichever occurs first.

The department continues to strive toward providing an array of residential living options designed to prevent, remediate, or reduce the effects of developmental delays and disabilities. To enhance this array of services, a mechanism is needed for requesting and evaluating proposals to develop beds made available by downsizing large state-owned residential facilities. Currently some Medicaid eligible individuals with special needs have to wait for placements in community homes until these beds become available. The lack of appropriate residential living options, particularly for individuals with special needs resulting from compounding functional limitations, creates a risk of harm to the health and well-being of these individuals. Therefore, the Bureau of Health Services Financing seeks to avoid denial of community home placement to these individuals by adoption of this emergency rule. This rule changes the facility need review process to allow for the issuance of solicitations of offers, as well as the evaluation of proposal offerings for these community and group home beds.

#### Emergency Rule

Effective March 1, 1994, the bureau hereby repeals Section 12502, Subsection A, Number 6 and adopts the following as Section 12502, Subsection A, Number 6:

Exception for beds approved from downsizing large residential ICF/MR's (16 or more beds):

a. A facility with 16 or more beds which voluntarily downsizes its enrolled bed capacity in order to establish a group or community home will be exempt from the facility need review application process and from the bed need criteria. Beds in group and community homes which are approved under this exception are not included in the bed-to-population ratio or occupancy data for group and

community homes approved under the Facility Need Review Program.

b. Any enrolled beds in the large facility will be disenrolled from the Title XIX Program upon enrollment of the same number of group or community home beds.

c. Prior approval of all Medicaid recipients for admission to facilities in beds approved to meet a specific disability need identified in a solicitation of offers issued by the department is required from the Office of Citizens with Developmental Disabilities before admission.

d. State-owned facility beds downsized to develop community or group home beds not owned by the state:

i. When the department intends to downsize the enrolled bed capacity of a state-owned facility with 16 or more beds in order to develop one or more group or community home beds not to be owned by the state, a Solicitation of Offers (SOO) will be issued. The SOO will indicate the parish or region in need of beds, the number of beds needed, the date by which the beds are needed to be available to the target population (enrolled in Medicaid), and the factors which the department considers relevant in determining the need for these beds.

ii. The SOO will be issued through the press (nearest major metropolitan newspaper), and will specify the dates during which the department will accept applications.

iii. No applications will be accepted under these provisions unless the department declares a need and issues a solicitation. Applications will be accepted for expansion of existing facilities and/or for the development of new facilities.

iv. Once submitted, an application cannot be changed; additional information will not be accepted.

v. The department will review the proposals and independently evaluate and assign points to each of the following 10 items on the application for the quality and adequacy of the response to meet the need of the project: Work Plan for Medicaid Certification; Availability of the Site for the Proposal; Relationship or Cooperative Agreements with Other Health Care Providers; Accessibility to Other Health Care Providers; Availability of Funds, Financial Viability; Experience and Availability of Key Personnel; Range of Services; Organization of Services and Program Design; Methods to Achieve Community Integration; Methods to Enhance and Assure Quality of Life; Plan to Ensure Client Rights, Maximize Client Choice and Family Involvement

vi. A score of 0-4 will be given to the applicant's response to each item using the following guideline:

0=inadequate response

1=marginal response

2=satisfactory response

3=above average response

4=outstanding response

vii. If there is a tie for highest score for a specific facility/beds for which the department has solicited offers, a comparative review of the top scoring proposals will be conducted. This comparative review will include prior compliance history. In the case of a tie, the department will make a decision to approve one of the top scoring applications based on comparative review of the proposals.

viii. If no proposals are received which adequately respond to the need, the department may opt not to approve an application.

ix. At the end of the 90-day review period, each applicant will be notified of the department's decision to approve or disapprove the application. However, the department may extend the evaluation period for up to 60 days. Applicants will be given 30 days from the date of receipt of notification by the department in which to file an appeal. (Refer to Section 12505 c., Appeal Procedures.)

x. The issuance of the approval for the proposal with the highest number of points shall be suspended during the 30 day period for filing appeals and during the pendency of any administrative appeal. All administrative appeals shall be consolidated for purposes of the hearing.

xi. Proposals approved under these provisions are bound to the description in the application with regard to type of beds and/or services proposed as well as to the location as defined in the solicitation made by the department. Approval for Medicaid shall be revoked if these aspects of the proposal are altered. Beds to meet a specific disability need approved through this exception must be used to meet the need identified.

e. Private facility beds downsized to privately owned group or community homes and state-owned facility beds downsized to state-owned group or community homes:

i. Facilities to whom these provisions apply should contact the regional Office of Citizens with Developmental Disabilities in the region where the proposed community or group home beds will be located. The regional office will review and evaluate the proposals, and recommend approval or disapproval to the Facility Need Review Program.

ii. The Office of Citizens with Developmental Disabilities will send a copy of the application with recommendations and comments to the Facility Need Review Program; the Facility Need Review Program will review the proposal, consider the recommendations, and issue notification to the applicant of approval or disapproval. A copy of the notification will be sent to the provider enrollment office in the Health Standards Section. The beds will not be enrolled in Medicaid without the approval of the Facility Need Review Program.

Rose V. Forest  
Secretary

## DECLARATION OF EMERGENCY

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

### Medicaid Pediatric Immunizations Provisions

The Department of Health and Hospitals, Office of the Secretary has adopted the following emergency rule as authorized by R.S. 46:153 and pursuant to Title XIX of the

Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing reimburses pediatric immunizations for Medicaid eligible children in accordance with the regulations governing these services under the Medicaid Program. The Omnibus Budget Reconciliation Act of 1993, (Public Law 103-66) Section 13631 includes a specific prohibition on pediatric immunizations which prohibits the Medicaid payment of a single antigen and its administration if a combined antigen was medically appropriate. This law further stipulates that combined-antigen vaccines must be approved by the Secretary of the U.S. Department of Health and Human Services. These provisions are effective October 1, 1993. At this time the only combined antigen which the U.S. Department of Health and Human Services has approved is the measles, mumps and rubella (MMR) combined-antigen vaccine. In order to comply with the Public Law 103-66 and to avoid federal sanctions and penalties; the Bureau of Health Services Financing adopted an emergency rule on October 1, 1993 on this matter which was published in the *Louisiana Register*, Volume 19, Number 10, page 1288. That emergency rule was subsequently repealed effective November 9, 1993 and the following provision which was concurrently adopted is being repromulgated and is effective March 9, 1994, for 120 days or until adoption of the final rule whichever occurs first.

#### **Emergency Rule**

Effective March 9, 1994, the Bureau of Health Services Financing does not reimburse providers for a single-antigen vaccine and its administration if a combined-antigen vaccine is medically appropriate and the combined-antigen vaccine is approved by the secretary of the United States Department of Health and Human Services.

This emergency rule and all other Medicaid rules and regulations are available at parish Medicaid offices for review by interested parties.

Rose V. Forrest  
Secretary

### **DECLARATION OF EMERGENCY**

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

#### **Approval Process for Medicaid Application Software**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule as authorized by R.S. 46:153, R.S. 46:56 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed.

This emergency rule has been adopted to comply with federal regulations governing the processing of applications for Medicaid eligibility and to avoid federal sanctions and penalties. In addition this rule will ensure the provision of necessary health and medical services to potential beneficiaries and serve to protect their health and welfare.

The Medicaid program has implemented the Louisiana Medicaid Outstationed Enrollment Center Program to make the Medicaid application and enrollment system much more accessible to the citizens of this state. Certification to participate in this program is granted to those Medicaid providers and agencies which complete the required technical training and furnish all necessary documentation. These certified providers and enrollment centers include a wide variety of facilities and agencies particularly those mandated by federal law to take Medicaid applications; federally qualified health centers and disproportionate share hospitals, as well as non-profit agencies such as Councils on Aging and community action agencies.

The process of completing Medicaid applications is normally performed manually; however, there are computer software products available which are designed to automate this process. These software products operate on common types of personal computers often used by enrollment centers.

Mandatory screening and approval is imperative in order to ensure quality control in the Medicaid Program. Medicaid Program requirements, both on the state and federal levels, are constantly undergoing modification. These changes usually have an impact on the Medicaid application forms. The Bureau must screen, test and monitor these software companies' products in order to ensure the enrollment centers have software programs which are in conformity with state and federal guidelines. All state and federal Medicaid program changes must be updated by software vendors seeking the BHSF's approval. Therefore, the Bureau of Health Services Financing is mandating final approval of these companies' software products prior to any sale or distribution.

#### **Emergency Rule**

Companies interested in obtaining the Bureau of Health Services Financing's approval for commercial distribution of their Medicaid application software products, must meet the following criteria, guidelines and requirements.

Applicants must submit with their request, all program diskettes, operation manuals, instructional manuals, technical support agreements, warranties, and all other supporting pertinent literature accompanying the program software. Departmental approval will not be exclusive. The bureau will accept applications from all companies interested in obtaining approval. Interested applicants must submit their request in writing to: Tom Collins, Director, Bureau of Health Services Financing, Department of Health and Hospitals, Box 91030, Baton Rouge, LA 70821-9030.

Upon review and testing of these products, the bureau will notify the applicants, in writing with a decision. If an approval is granted, the following conditions will be enforced in order to maintain approval status.

Approved companies must sign a binding agency agreement with the Bureau prior to any authorized commercial distribution of its product. The period of this agreement will

be determined by the bureau. The company must agree to update its software program on a timely basis to all of its customers within 30 days of any HCFA or DHH updates (i.e., income tables, application format, policy and program changes). Furthermore, the company must submit a complete disk copy of its software program updates to DHH within 30 days of such update.

The computerized application shall meet the policy objectives of processing a duplicate image of the hard copy application, BHSF 1-G, BHSF 1-WC, and/or BHSF 1-L. In addition, the following requirements must be met:

a) The pre-application form must be deleted from the program.

b) A security mechanism must be contained in the program to ensure that after five business days, the applicant's information is "locked-in" and cannot be altered.

c) Enrollment centers will not be charged by the vendor for applications taken on individuals already certified for Medicaid eligibility.

Each form produced and/or submitted from the software must be an accurate and complete reflection of the input data and interview information.

All supplemental/auxiliary forms, if available, must accurately reflect the BHSF forms.

The software program must contain a feature to ensure compliance with confidentiality standards of 42 CFR 431.300 et seq. and R.S. 46:56, so that an applicant's file is permanently erased from the computer's memory either after five business days, or upon final print-out of the completed application forms, whichever occurs sooner.

The computerized application shall provide all data processing, programming, application generation and storage on-site as a (PC/DOS/window - based), stand-alone application at the enrollment center's place of business. Since all Medicaid application data is confidential, it is expressly conditioned that there shall be no off-site processing, programming or storage of client application data. Prohibited data storage and processing shall include off-site mainframe or other client-server systems where data is stored, processed and/or programmed off-site. The computerized application may be run on an on-site local area network.

Authorized companies receiving DHH approval must also post a \$50,000 performance bond in order to maintain its approved status.

Copies of this emergency rule and all other Medicaid rules and regulations are available at Parish Medicaid Offices for review by interested parties.

Rose V. Forrest  
Secretary

## DECLARATION OF EMERGENCY

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

### Residents' Trust Fund

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

Currently federal regulations under the Medicaid Program prohibit nursing facilities from charging against the personal funds of a resident for any item or service for which payment is made under Medicaid. On November 12, 1992, the Health Care Financing Administration published a final rule amending the residents' rights provision on the Requirements for Participation in Medicare and Medicaid by setting forth the minimum services that states must include in the Medicare and Medicaid payment to a nursing facility, extra items and services for which a facility may charge residents, and provisions governing requests for items and services. This final rule is entitled "Charges to Residents' Funds in Nursing Homes," *Federal Register*, Volume 57, page 53572 and amends regulations found at 42 CFR 483.10(c)(8). The regulation includes the following general categories of required items and services included in the Medicaid rate: all nursing, dietary, program activities, medically related social services, all room and bed maintenance services and routine personal hygiene items and services are covered under the Medicare or Medicaid rate. Therefore, in order to comply with this new federal regulation and to avoid federal sanctions or penalties the bureau has adopted the following emergency rule on October 1, 1993 and a notice of intent was published in the November 20, 1993 issue (Volume 19, Number 11) of the *Louisiana Register*. This emergency rule has been adopted to continue these provisions in force until adoption of the rule on February 20, 1994.

### Emergency Rule

Effective, January 29, 1994, the Bureau of Health Services Financing has adopted the following federal regulations incorporated in 42 CFR 483.10(c)(8) governing the protection of residents' funds in nursing facilities.

**Limitation on Charges to Personal Funds.** The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with 42 CFR 489.32. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See 42 CFR 447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)



## **I. Services Included in Medicare or Medicaid Payment**

During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:

- A. nursing services as required by 42 CFR 483.30;
- B. dietary services as required by 42 CFR 483.35;
- C. an activities program as required by 42 CFR 483.15(f);
- D. room/bed maintenance services;
- E. routine personal hygiene items and services as required to meet the needs of residents, including but not limited to hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies, towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing and basic personal laundry;
- F. medically-related social services as required by 42 CFR 483.15(g).

## **II. Items and Services that may be Charged to Residents' Funds**

Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

- A. telephone;
- B. television/radio for personal use;
- C. personal comfort items, including smoking materials, notions and novelties, and confections;
- D. cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare;
- E. personal clothing;
- F. personal reading matter;
- G. gifts purchased on behalf of a resident;
- H. flowers and plants;
- I. social events and entertainment offered outside the scope of the activities program, provided under 42 CFR 483.15(f);
- J. noncovered special care services such as privately hired nurses or aides;
- K. private room, except when therapeutically required (for example, isolation for infection control);
- L. specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by 42 CFR 483.35. (Note: Facilities must refer to the Nursing Facility Standards for Payment for specific requirements regarding patient nourishment and dietary services prior to charging patients for such items.)

## **III. Requests for Items and Services**

- A. The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.
- B. The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.
- C. The facility must inform the resident (or his or her representative) requesting an item or service for which a

charge will be made that there will be a charge for the item or service and what the charge will be.

Copies of this emergency rule and all other Medicaid rules and regulations are available at parish Medicaid offices for review by interested parties.

Rose V. Forrest  
Secretary

## **DECLARATION OF EMERGENCY**

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

### **Transfer of Assets**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the emergency provision of the Administrative Procedure Act, R.S. 49:953(B).

The Medical Assistance Program in accordance with Public Law 100-360 published a rule regarding the transfer of resources under Title XIX on June 20, 1990. This rule states that transfer of resources will be in accordance with the Health Care Financing Administration's State Medicaid Manual publication, Section 3250-3255. However, the Omnibus Budget Reconciliation Act of 1993, Section 13611 amended Section 1917(c)(1) (42 U.S.C.1396p(c)(1)) of the Social Security Act, thereby changing how state Medicaid Programs currently determine periods of restricted coverage based on asset transfers for less than fair market value. These changes affect the current definition of "resources," the period of review for transfers and trusts, the penalty period for inappropriate transfers, joint tenancy, applicability of ineligible transfers applies to person(s) who establish trusts other than the individual, and allowable trusts. The agency is adopting the provisions of OBRA 1993 as mandated for implementation effective with service provided on or after October 1, 1993, with respect to assets disposed of on or after August 11, 1993, and with respect to trusts established on or after August 11, 1993. In order to comply with federal law and to avoid federal sanctions or penalties, the agency has adopted the following emergency rule. A notice of intent on these provisions was published in the December 20, 1993 issue (Volume 19, Number 12) of the *Louisiana Register*. The following emergency rule has been adopted to continue in force the provisions of the emergency rule and shall remain in effect for 120 days or until the final rule is adopted whichever occurs first.

### **Emergency Rule**

Effective January 29, 1994, the Bureau of Health Services Financing applies the following provisions in determining Medicaid eligibility of institutionalized individuals or applicants for home and community-based services when

transfers of resources occur for less than fair market value except for interspousal transfers as mandated by the Omnibus Reconciliation Act of 1993. These changes apply to trusts established and assets disposed of on or after the date of enactment of Public Law 103-66 which is August, 1993.

1. The term "resources" was replaced with "assets" thereby extending applicability to income transfers.

2. The bureau determines whether an institutionalized individual (or spouse of such individual) has disposed of assets for less than fair market value during the 36-month (60-month for certain trusts) period immediately before he or she made application for medical assistance.

3. The penalty period applicable to individuals who transfer assets for less than fair market value will continue until the total cumulative uncompensated value of assets transferred is depleted in accordance with current program methodology.

4. Penalty period sanctions for multiple or incremental transfers shall be cumulative and follow consecutively rather than concurrently.

5. Assets held in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement shall be considered transferred by the individual when any action is taken, either by the individual or by any other person, that reduces or eliminates the individual's ownership or control.

6. For purposes of determining an individual's eligibility for Medicaid the following rules shall apply to trusts. An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust:

- a. the individual;
- b. the individual's spouse;
- c. a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse;
- d. a person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

The above provisions will be applied without regard to:

- a. the purpose for which a trust is established,
- b. whether the trustees have or exercise any discretion under the trust,
- c. any restrictions on when or whether distribution may be made from the trust, or
- d. any restrictions on the use of distributions from the trust.

In case of an irrevocable trust:

a. If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered as income, as an available resource or as a transfer of assets.

b. A portion of the trust from which no payment could be made to the individual under any circumstances shall be considered, as of the date of establishment of the trust to be assets disposed, and subject to transfer of assets sanctions.

The above rules regulating trusts do not apply to trusts

provided that upon the death of such individual the state will receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on behalf of the individual by Medicaid.

Rose V. Forrest  
Secretary

## DECLARATION OF EMERGENCY

Department of Treasury  
Housing Finance Agency

HOME Investment Partnership Program  
(LAC 16:II.101)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Housing Finance Agency is amending the following HOME Program rule in connection with the construction and/or rehabilitation of residential rental units under the HOME Program.

The purpose of this emergency rule is to avoid imminent peril to the welfare of the residents of the state. Failure of the agency to adopt this emergency rule would harm the residents of the state by not permitting the state to award, commit and disperse HOME Program funds to the fullest extent permitted by federal law.

This emergency rule shall be effective from its date of adoption, January 12, 1994, and shall continue in effect until the earlier of adoption of a substitute rule or 120 days.

### TITLE 16

### COMMUNITY AFFAIRS

#### Part II. Housing Finance Agency

#### Chapter 1. Home Investment Partnership Program

#### §101. Home Program Application Fees

##### A. Residential Rental Projects

| 1. Project Size | Application Fee |
|-----------------|-----------------|
| 1 to 4 units    | \$ 200          |
| 5 to 16 units   | \$ 500          |
| 17 to 32 units  | \$ 1,000        |
| 33 to 60 units  | \$ 1,500        |
| 61 to 100 units | \$ 2,000        |
| Over 100 units  | \$ 5,200        |

2. A reprocessing fee of 50 percent of the application fee shall be due whenever significant revisions or changes to the contents of an application requiring a new feasibility and/or viability analysis.

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with the Louisiana Housing Finance Agency Act, R.S. 40:600.1, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Treasury, Housing Finance Agency, LR 19:908 (July 1993), repromulgated LR 19:1034 (August, 1993).

V. Jean Butler  
President

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Offshore Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close the state's offshore waters, the Wildlife and Fisheries Commission hereby orders a closure of that portion of the state's offshore territorial waters from the beach out to three miles from the Mississippi-Louisiana state line west to South Pass of the Mississippi River and from Bayou Lafourche west to Freshwater Bayou effective at 12:01 a.m. Saturday, February 12, 1994. R.S. 56:498 provides that the minimum legal count on white shrimp is 100 (whole shrimp) count per pound after the third Monday in December. Historical and current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that white shrimp in much of the state's outside waters do not average 100 count minimum size or larger since the count was reinstated. This action is being taken to protect these small white shrimp and allow them the opportunity to grow to a more valuable size. The Wildlife and Fisheries Commission also hereby authorizes the secretary of the Department of Wildlife and Fisheries to open any special seasons to harvest overwintering white shrimp in the state's inshore waters as indicated by technical data derived from the department's ongoing shrimp monitoring program.

John F. "Jeff" Schneider  
Chairman

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Wildlife and Fisheries Commission

#### Special Pink Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters, the Wildlife and Fisheries Commission does hereby set a special pink shrimp season to open in that area of Breton and Chandeleur Sounds as described in the menhaden rule (LAC 76:VII.307.D) at sunset on Friday, February 18, 1994, and extend through sunrise March 31, 1994, and shall be restricted to night-time (sunset to sunrise) fishing only. The secretary of the Department of Wildlife and Fisheries is also hereby authorized to close the

special pink shrimp season if biological and technical data indicates the need to do so, or enforcement problems develop. The secretary is also hereby authorized to close and reopen the shrimp season in the state's territorial sea and set any special inshore shrimp seasons to harvest overwintering white shrimp, as indicated by technical data secured through the Department of Wildlife and Fisheries' shrimp sampling program.

John F. "Jeff" Schneider  
Chairman

# RULES

## RULE

### Department of Agriculture and Forestry Horticulture Commission

#### Minimum Examination Performance Levels (LAC 7:XXIX.15111)

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXIX. Horticulture Commission

#### §15111. Minimum Examination Performance Levels Required

A. The minimum performance level for satisfactory completion of all examinations for licensure, except the examination for landscape architect, shall be 70 percent. The minimum performance level for satisfactory completion of the retail floristry exam shall be 70 percent for the written segment and 70 percent for the design segment of the examination.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801 and R.S. 3:3807.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 20: (February 1994).

Bob Odom  
Commissioner

**RULE**

**Department of Agriculture and Forestry  
Office of Agro-Consumer Services  
Agriculture Commodities Commission**

LACC Assessments (LAC 7:XXVII.14727)

*(Editor's Note: A portion of rules, which appeared on pages 1299 through 1304 of the October 20, 1993 Louisiana Register, is being republished to correct typographical errors.)*

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXVII. Agricultural Commodity Dealer and Warehouse Law**

**Chapter 147. Agricultural Commodities Commission**

**§14727. Assessments: Amount, Time of Payment, Payment Under Special Conditions**

A. - E. ...

F. Rates of Assessments

1. ...

2. Rates of assessments to be levied at the first point of sale of agricultural commodities:

|  |                          |
|--|--------------------------|
| Rough Rice                             | \$.008 per hundredweight |
| Rice                                   | \$.008 per hundredweight |
| Sugar                                  | \$.008 per hundredweight |
| Corn                                   | \$.005 per bushel        |
| Soybeans                               | \$.005 per bushel        |
| Oats                                   | \$.005 per bushel        |
| Milo or sorghum                        | \$.005 per bushel        |
| Wheat                                  | \$.005 per bushel        |
| Cotton                                 | \$.10 per bale           |
| Canned/frozen fruits/juices/vegetables | \$.015 per case/carton   |
| Molasses/syrup                         | \$.05 per 100 gallons    |
| Oil                                    | \$.10 per 100 gallons    |
| Pecans: Shelled                        | \$.01 per 30 lb. carton  |
| Pecans: Unshelled                      | \$.20 per 130 lb.        |
| Peppers: Barrels                       | \$.24 per barrel         |
| Peppers: Cisterns                      | \$.20 per cistern        |

3. - 4. ...

G. - H. ...

**AUTHORITY NOTE:** Promulgated in accordance with R. S. 3:3422 and R. S. 3:3405.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:303 (May 1983), amended LR 9:459 (June 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural

Commodities Commission, LR 19: (October 1993), repromulgated LR 20: (February 1994).

Bob Odom  
Commissioner

**RULE**

**Department of Economic Development  
Office of Financial Institutions**

Capital Companies Tax Credit Program  
(LAC 10:XV.301-321)  
(Repeal of LAC 13:I.723, 725, and 727)

The Department of Economic Development, Office of Financial Institutions hereby exercises its authority provided under the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to authority granted by R.S. 51:1929, to amend LAC 13:I.701-721, and to repeal LAC 13:I.723-727 of LAC 13.I.Chapter 7, "Louisiana Capital Companies Tax Credit Program."

This rule provides for the transfer of administration of the program from the Office of Commerce and Industry to the Office of Financial Institutions.

This rule places more stringent guidelines on and provides greater guidance to those groups interested in becoming Certified Louisiana Capital Companies.

Clarification provided in the rule will enhance the regulation of the Certified Louisiana Capital Companies and should promote investment in such companies, since the terms of the statute are clarified in a more objective and measurable manner.

This rule shall become effective February 20, 1994.

*(Editor's Note: Rules formerly promulgated under LAC 13, Part I, Chapter 7, Louisiana Capital Companies Tax Credit Program are being recodified under LAC Title 10, Part XV, Chapter 3.)*

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES AND UCC**

**Part XV. Other Regulated Entities**

**Chapter 3. Louisiana Capital Companies Tax Credit Program (formerly LAC 13:I.Chapter 7)**

**§301. Description of Program (formerly LAC 13:I.701)**

These rules implement the Louisiana Capital Companies Tax Credit Program pursuant to R.S. 51:1921 et seq. and R.S. 22:1068(E). This program was created by Act 642 of the 1983 Legislature, amended by Act 891 in 1984, Acts 695 and 915 in 1986, Act 496 in 1989 and Acts 279 and 724 of 1993.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1921-1932.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Office of Financial Institutions, LR 20: (February 1994).

**§303. Definitions Provided by Rule (formerly LAC 13:I.703)**

The following terms shall have the meanings provided

herein, unless the context clearly indicates otherwise:

*Affiliated Companies* or *Affiliate*—for purposes of the transfer or sale of income and premium tax credits, pursuant to R.S. 51:1924(F) and R.S. 22:1068(E)(4):

a. two or more corporations, partnerships or juridical entities closely related through common ownership or stock

b. the surviving entity after a merger into that entity of an insurance company; or

c. the transferee from an insurance company in rehabilitation, receivership or liquidation.

*Allowable Organization Costs*—are those direct costs incurred to incorporate and charter an entity; however, such costs are limited to 25 percent of capitalization, before any reduction for disallowed organization costs.

a. Direct organization costs include, but are not limited to legal, accounting, consulting fees and printing costs directly related to the chartering or incorporation process, and filing fees paid to chartering authorities. Allowable organization costs may be capitalized and amortized over a period not to exceed five years.

b. Pre-opening and development stage enterprise costs, such as salaries and employment benefits, rent, depreciation, supplies, directors' fees, training, travel, expenses associated with the establishment of business relationships, postage and telephone fees are examples of costs that shall be expensed and not capitalized. Similarly, direct costs associated with the offering and issuance of capital stock are not considered to be organization costs and shall not be capitalized; these costs shall be deducted from the proceeds in recording initial capitalization.

*BIDCO*—a business and industrial development corporation licensed pursuant to the Louisiana Business and Industrial Development Corporation Act, R.S. 51:2386 et seq.

*CAPCO*—a certified Louisiana capital company certified pursuant to the Louisiana Capital Companies Tax Credit Program, R.S. 51:1921 et seq.

*Capitalization*—for purposes of initial certification, pursuant to R.S. 51:1925(B):

a. generally accepted accounting principles (GAAP) capital: common stock, preferred stock, general partnership interests, and limited partnership interests, all of which shall be exchanged for cash; surplus; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by disallowed organization costs.

b. LESS: the following, when any preferred or common stock, or partnership interests are subject to redemption or repurchase by the CAPCO:

Preferred stock, common stock, partnership interests, or limited partnership interests shall be multiplied by the following percentage reductions and deducted from capital:

|  |      |
|--|------|
| Within 5 years from redemption or repurchase | 20%  |
| Within 4 years from redemption or repurchase | 40%  |
| Within 3 years from redemption or repurchase | 60%  |
| Within 2 years from redemption or repurchase | 80%  |
| Within 1 year from redemption or repurchase  | 100% |

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal within five years after certification,

provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit or premium tax reduction.

*Commissioner*—the commissioner of the Office of Financial Institutions.

*Control*—owning, controlling, or having the power to vote, directly or indirectly, ten percent or more of any class of voting securities; or controlling in any manner the election of a majority of the directors or trustees; or after notice and opportunity for hearing, the commissioner determines that such company or shareholder, directly or indirectly, exercises a controlling influence over the management or policies of the other company.

*Date Certified, Newly Certified or Designated as a Certified Louisiana Capital Company*—the date that a CAPCO is notified of the certification or recertification by the commissioner.

*Equity Investment*—shall include [pursuant to R.S. 51:1923(4) and *Qualified Investment* as hereinafter defined pursuant to R.S. 51:1923(5)] common stock, preferred stock and debt, provided such debt is convertible into common stock or preferred stock at the option of either the CAPCO or the CAPCO and the borrower. The dominant feature of the conversion right shall be the right to acquire, or the acquisition of, an equity position, i.e., an ownership interest. Such debt, common stock or preferred stock may include the following features or elements: royalty rights, net profit interests, warrants for future ownership, or equity sale participation rights, all as hereinafter defined, and such other conceptually similar rights and elements as the OFI may approve.

a. *Royalty Right*—a right to receive a percent of gross or net revenues, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interest*—a right to receive a percent of operating or net profits, may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrant for Future Ownership*—an option on the stock of the qualified Louisiana business. The qualified Louisiana business may repurchase a warrant (a "call") or the qualified Louisiana business may be required to repurchase a warrant (a "put") at some fixed amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Right*—a conversion option of debt, to convert all or a portion of the debt to the qualified Louisiana business's stock, then to participate in the sale of the stock of the qualified Louisiana business.

*Office and OFI*—the Office of Financial Institutions.

*Permissible Investments*—for purposes of R.S. 51:1926(B), cash deposited with a federally-insured financial institution; certificates of deposit in federally-insured financial

institutions; investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; or any other investments approved in advance, in writing, by the commissioner.

**Primary Business Activity**—at all times, a minimum of 50 percent of total certified capital, which has been collected in cash, will be available for investment in or has been invested as a qualified investment.

**Qualified Investment**—as defined in R.S. 51:1923(5), shall not include:

a. any investment in a business engaged primarily in lending or investing activities, long-term leasing activities or any passive business activities. A passive business is one that is not engaged in a regular or continuous operation or derives substantially all of its income from passive investments that generate interest, dividends, royalties or capital gains;

b. with the exception of participations between CAPCOs, any qualified investment which is reflected as a qualified investment on another CAPCO's books;

c. reciprocal investments or loans made between CAPCOs;

d. an investment in a subsidiary of a CAPCO;

e. an investment in an affiliate of the CAPCO, unless approved in writing by the commissioner. For purposes of this subsection, *affiliate* means a person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the CAPCO or its management or directors.

**Qualified Louisiana Business**—a business that will use substantially all of the proceeds from a qualified investment in the furtherance of economic development within Louisiana, as may be demonstrated by one or more of the following economic indicators resulting from such qualified investment:

a. an increase in the number of Louisiana jobs or the retention of existing Louisiana jobs;

b. an increase or expansion in production facilities or operating facilities within Louisiana;

c. an increase in export trade directed through Louisiana ports;

d. an increase in overall sales or production volume in the qualified Louisiana business; or

e. any other economic benefits to the state of Louisiana.

**Total Certified Capital Under Management**—for purposes of investment limits, pursuant to R.S. 51:1926(B):

a. GAAP capital: common stock, preferred stock, general partnership interests, and limited partnership interests, all of which shall be exchanged for cash; surplus; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by disallowed organization costs.

b. PLUS Qualified NON-GAAP Capital: the portion of any certified capital in the form of debentures, notes or any other quasi-equity/debt instruments with a maturity of at least

five years which is available for investment in Qualified Investments.

c. LESS: the following, when any GAAP Capital or Qualified NON-GAAP Capital is subject to redemption or repurchase by the CAPCO:

The GAAP Capital and Qualified NON-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital:

|  |      |
|--|------|
| Within 5 years from redemption or repurchase | 20%  |
| Within 4 years from redemption or repurchase | 40%  |
| Within 3 years from redemption or repurchase | 60%  |
| Within 2 years from redemption or repurchase | 80%  |
| Within 1 year from redemption or repurchase  | 100% |

**Total Certified Capital or Certified Capital**—for purposes of R.S. 51:1926, 1927 and 1928 means the total of all investments into a CAPCO pursuant to R.S. 51:1924(A) and (B) and R.S. 22:1068(E), and includes any investments made by an agency of the state of Louisiana or a political subdivision of the state of Louisiana.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1921-1932.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

### **§305. Income and Premium Tax Credit**

(formerly LAC 13:I.705)

A. In order to be eligible for any income or premium tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of at least five years from the date of issuance. If an investment is in the form of stock or a partnership interest, the stock or partnership interest shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a CAPCO voluntarily decertifies and preserves all income and premium tax credits, if debentures, notes or any other quasi-equity/debt instruments or stock or partnership interests are redeemed or repurchased within five years from issuance, any income or premium tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Insurance or the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Subpart.

B. The transfer or sale of income or premium tax credits will be allowed, subject to the following conditions:

1. The transfer or sale of income or premium tax credits, pursuant to R.S. 51:1924(F) or R.S. 22:1068(E)(4), will be restricted to transfers or sales between affiliated companies.

2. All transactions involving the sale or transfer of income or premium tax credits shall be subject to the approval of the commissioner. Companies shall submit, in writing, to the commissioner, a notification of any transfer or sale of income or premium tax credits within 30 days of the transfer or sale of such credits. The notification shall include a copy of a proposed act of transfer or sale. The act of transfer or

sale shall contain the original investors' income or premium tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for both seller and purchaser, the date of transfer, and the amount of the transfer.

3. If an insurance company transfers credits between affiliated companies, the notification submitted to the office must include a worksheet, which the company shall also attach to the premium tax returns for any affiliates claiming premium tax credits, that shall contain the following information for each affiliate:

- a. name of each affiliate;
- b. the gross premium tax liability;
- c. credits taken under R.S. 22:1068 (A);
- d. credits taken under R.S. 22:1068 (B);
- e. credits taken under R.S. 22:1068 (C);
- f. credits taken under R.S. 22:1068 (D);
- g. Louisiana Insurance Guaranty Association (LIGA) credits;
- h. Louisiana Life and Health Insurance Guaranty Association (LHIGA) Credits;
- i. net premium tax liability before CAPCO premium tax reductions;
- j. credits taken under R.S. 22:1068 (E); and
- k. net premium tax liability after all credits.

Letters a through k shall be reflected as columns and the entire worksheet shall be totalled, in order for the office and the Department of Insurance to verify the amount of total credits taken among affiliated companies.

4. If income tax credits are transferred between affiliates, the notification submitted to the office must include a worksheet, which the transferor shall also attach to the Louisiana corporate and individual income tax returns for all affiliates claiming income tax credits, which shall contain the following information, for each corporation or individual involved:

- a. name of each affiliate,
- b. the gross Louisiana Corporation or individual income tax liability of each affiliate, and
- c. credits taken under R.S. 51:1924(A) and (B).

5. Failure to comply with this rule may jeopardize the income or premium tax credit transferred.

6. The office will notify the Department of Revenue and Taxation or the Department of Insurance of all transactions involving the transfer or sale of premium or income tax credits granted under R.S. 51:1924 or R.S. 22:1068, and reported pursuant to R.S. 51:1925(D).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1924(F) and 1929, and R.S. 22:1068(E).

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November, 1984), amended LR 12:664 (October, 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December, 1989), LR 16:762 (September, 1990), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

#### **§307. Application Fees, Other Fees (formerly LAC 13:I.707)**

A. An "Advance Notification" of intent to seek certification shall be filed by a company or entity, "the applicant," prior to filing an application. An advance notification fee of \$100 shall

be submitted with the advance notification form.

B. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000. If, at the close of the 12-month funding period, 0.2 percent of the total taxes to be exempted exceeds the amount of the application fee originally submitted, the CAPCO shall submit the difference, up to the \$5,000 maximum, to the office. Checks should be payable to: Louisiana Office of Financial Institutions.

C. The office reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications and applications which have been accepted, will not be refundable.

D. The commissioner shall conduct an annual review of each CAPCO to determine the company's compliance with the rules and statutes. Examiner time shall be billed at a rate not less than \$50 per hour, per examiner, or \$500, whichever is greater.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1925 and 1929.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

#### **§309. Application Process (formerly LAC 13:I.709)**

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified equity investments, or financing assistance as a licensed BIDCO, as required in R.S. 51:1921 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

B. The form for applying to become a CAPCO may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filings shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Said application and all submissions of additional information reported to the Office, shall be forwarded via United States mail, properly addressed and postmarked and signed by a duly authorized officer, manager, member or partner, and contain the following information and evidence:

1. the full legal name of the applicant;
2. the street address of the applicant's principal office in Louisiana;
3. each individual director, officer, general or managing officer, manager member, or shareholder with a five percent or greater stock or partnership interest and each investor with a five percent or greater investment in the total certified capital under management, shall provide the following: names,

street addresses, Social Security numbers, date of birth, personal financial statements, resumés indicating employment experience, an affidavit listing any outstanding federal, state, or local tax liens against them and disposition thereof, and a signed "Authority to Obtain Information" form. The name, federal employer identification number and most recent financial statement shall be provided for each corporate investor with a five percent or greater interest in the total certified capital under management;

4. a certified copy of the certificate of incorporation, articles of organization, articles of incorporation, or a certified copy of the certificate of formation of a limited partnership, or trust documents, or other evidence that the applicant is organized and existing under the laws of Louisiana, as required by the Secretary of State;

5. information and evidence that the applicant's purpose is to encourage and assist in the creation, development, and expansion of Louisiana businesses and to provide maximum opportunities for the employment of Louisiana residents, by making equity investments, or financing assistance as a licensed BIDCO, available to Qualified Louisiana Businesses;

6. information and evidence that the applicant has disclosed or will disclose to all investors that a tax credit is not available for an investment in a company until the company has been designated a certified Louisiana capital company;

7. information and evidence that the applicant has disclosed or will disclose to all investors that all statutory limits on tax credits are disclosed;

8. information and evidence that the applicant has disclosed or will disclose to all investors that the state of Louisiana is not liable for damages to an investor in a Louisiana capital company that fails to become designated as a certified Louisiana capital company;

9. a statement that if the investors in the company or partnership receive a tax credit under R.S. 51:1921 et seq., or R.S. 22:1068, the company or partnership will use its certified capital to make qualified investments as required in R.S. 51:1926;

10. a statement that the company will comply with all requirements of R.S. 51:1921 et seq., including the filing of quarterly reports of new investors and qualified investments that include the name of each investor in a CAPCO who has applied for a tax credit, the amount of each investor's investment, the amount of tax credit allowed to the investor and the date on which the investment was made;

11. information stating the estimated total certified capital of the applicant and how the value has been determined;

12. information showing that the applicant's GAAP capital, as of the date certified will be \$200,000 or more;

13. proforma statements of income and condition for the first day of operation and for the following three years, with a listing of organization and pre-operating costs and evidence of availability of capital funds;

14. the CAPCO shall include in any offering involving the sale of shares or debentures to an investor, the following statement:

"The State of Louisiana is not liable for damages to an investor in a Certified Louisiana Capital Company. Use of the words "certified" or "Louisiana" in an offering does not constitute a recommendation or endorsement of the investment by the Louisiana Department of Economic Development."

15. a statement disclosing any existing or potential conflicts of interest between the applicant, members, managers, associates or affiliates;

16. any other information deemed relevant to the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 15 days of receipt. An incomplete application shall be resubmitted, either in a partial manner or totally, as deemed necessary by the commissioner. A previously incomplete application may be resubmitted, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1925 and 1929.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended LR 12:664 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

### §311. Conditions of Certification (formerly LAC 13:I.711)

A. All CAPCOs, through a resolution signed by every board member, shall acknowledge and approve the following conditions for certification as a certified Louisiana capital company:

1. a statement certifying that the CAPCO has an initial capitalization of not less than \$200,000. If any capitalization is repurchased or contemplated to be repurchased by the CAPCO within five years after certification, the CAPCO will concurrently replace any repurchased capital with cash capital, as defined under *Generally Accepted Accounting Principles*. Furthermore, any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits or premium tax reductions;

2. a statement that the CAPCO will notify, in writing, the office prior to the sale or redemption of stock, partnership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests or debentures;

3. a statement that the board of directors may not elect new or replace existing board members or declare dividends without prior written consent of the office for the first two years of business;

4. a statement that the CAPCO will immediately notify the office when its total certified capital under management is not sufficient to enable the CAPCO to operate as a viable going concern;

5. a statement that the CAPCO will not engage in any



activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office;

6. a statement that the CAPCO will comply with the CAPCO Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification;

7. if a CAPCO contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the CAPCO shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana Securities Laws, Federal Securities Laws, and the securities laws of any other states where the offerings have been made. Copies of all offering materials to be used in investor solicitations must be submitted to the office, prior to investor solicitation;

8. any other conditions deemed relevant to the commissioner.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1925 and 1929.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

**§313. Requirements for Continuance of Certification and Voluntary Decertification (formerly LAC 13:I.713)**

A. In calculating the percentage requirements for continued certification under R.S. 51:1926(A), and voluntary decertification under R.S. 51:1928, the numerator shall be the sum of all qualified investments held or intended to be held for one year or greater, and 50 percent of all qualified investments held or intended to be held less than one year; the denominator shall be total certified capital.

B. If a CAPCO invests a portion of its total certified capital in a wholly-owned subsidiary, the qualified investments made by the wholly owned subsidiary shall be added to the numerator under Subsection A of this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1926 and 1929.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

**§315. Initial Funding Period (formerly LAC 13:I.715)**

A. Except as provided by R.S. 22:1068(E), a newly certified CAPCO will have a funding period of 12 months, from the date of receiving certification, in which to finalize additional investments into its certified capital.

B. Any CAPCO which has not completed or closed its initial funding, pursuant to R.S. 51:1924(D), may apply to the commissioner for recertification by written request. A CAPCO applying for recertification must demonstrate to the satisfaction of the commissioner that:

1. the CAPCO is in compliance with R.S. 51:1921, et seq. and the rules and regulations promulgated thereunder;
2. compelling reasons exist for recertification; and
3. recertification will not adversely affect any previous investors.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1924 and 1929.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

**§317. Premium Tax Reductions for Insurance Companies (formerly LAC 13:I.717)**

A. The Allowable Annual Premium Tax Credit (AAPTC) that may be taken during any year shall be the lesser of (1) 10 percent of premium tax reduction allowable; or (2) 25 percent of the gross premium tax liability for the base year of investment. Furthermore, the credit taken in any year shall not exceed the net premium tax liability for that year.

B. The Premium Tax Reduction Allowable (PTRA) is 120 percent of the investment in a CAPCO.

C. The Gross Premium Tax Liability in the Base year of Investment (GPTLB) is the gross premium tax liability in the year of investment, before any credits.

D. The Gross Premium Tax Liability (GPTL) is the gross premium tax liability during any year for which the CAPCO credit may be taken, before any credits.

E. The Net Premium Tax (NPT) is the GPTL, reduced by credits provided in R.S. 22:1068 (A), (B), (C) and (D), and credits for Louisiana Insurance Guaranty Association (LIGA) and Louisiana Life and Health Insurance Guaranty Association (LHIGA) assessments. If the AAPTC ever exceeds the NPT in any year, the excess may be carried forward until utilized.

Example: Base (Taxable) years of investment, assuming multiple investments of \$2,000,000 and \$1,000,000, respectively, by an insurer in CAPCOs.

|   | <u>1993</u>      | <u>1994</u>      |
|---|------------------|------------------|
| Investment by Insurer *   | \$ 2,000,000     | \$ 1,000,000     |
| Premium Tax Reduction Allowable                                       |                  |                  |
| "PTRA" (120% of Investment)   | 2,400,000        | 1,200,000        |
| Gross Premium Tax Liability   |                  |                  |
| "GPTL" of Insurer   | 1,000,000        | 1,100,000        |
| Credits from R.S. 22:1068 (A), (B), (C), (D), LIGA or LHIGA           | <u>(600,000)</u> | <u>(540,000)</u> |
| Net Premium Tax Before CAPCO  |                  |                  |
| Credits "NPT"   | \$ 400,000       | \$ 560,000       |
| Allowable Annual Premium Tax Credit "AAPTC"                           |                  |                  |
| For the Base Year of Investment is the Lesser of:                     |                  |                  |
| (1) 10% of PTRA   | 240,000          | 120,000          |
| (2) 25% of GPTLB  | 250,000          | 275,000          |
| And further limited to  |                  |                  |
| 100% of NPT   | 400,000          | 560,000          |
| For subsequent years, the AAPTC for each investment is the lesser of: |                  |                  |
| (1) The Base Year Reduction   | 240,000          | 120,000          |
| (2) 100% of NPT for the Subsequent Years                              |                  |                  |

If Net Premium Tax liabilities of \$500,000 per year are estimated for the period of 1993 through 2003, the following amount of AAPTC may be taken:

| <u>YEAR</u>  | <u>1993</u>         | <u>1994</u> | <u>AAPTC</u>              |
|--------------|---------------------|-------------|---------------------------|
| 1993         | (240,000 + 0 )      |             | \$ 240,000                |
| 1994         | (240,000 + 120,000) |             | 360,000                   |
| 1995         | (240,000 + 120,000) |             | 360,000                   |
| 1996         | (240,000 + 120,000) |             | 360,000                   |
| 1997         | (240,000 + 120,000) |             | 360,000                   |
| 1998         | (240,000 + 120,000) |             | 360,000                   |
| 1999         | (240,000 + 120,000) |             | 360,000                   |
| 2000         | (240,000 + 120,000) |             | 360,000                   |
| 2001         | (240,000 + 120,000) |             | 360,000                   |
| 2002         | (240,000 + 120,000) |             | 360,000                   |
| 2003         | ( 0 + 120,000)      |             | <u>120,000</u>            |
| <b>TOTAL</b> |                     |             | <b><u>\$3,600,000</u></b> |

\* Note: The amount of investment by an insurer in a CAPCO, in any one year, that would maximize the use of premium tax credits is calculated as follows:  $(GPTLB \times 25\% \times 10 \text{ yrs}) / 1.20$ . In this example, the formula would yield an investment amount of \$2,083,333 in 1993 and \$2,291,666 in 1994.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:1068(E) and R.S. 51:1929.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

**§319. Information Required from Qualified Louisiana Businesses (formerly LAC 13:I.719)**

Qualified Louisiana businesses shall submit the following information to a CAPCO, prior to the funding of any qualified investment in a qualified Louisiana business (business):

1. Affidavit that the business:

a. will use in its business, substantially all of the proceeds from the qualified investment in the furtherance of economic development within Louisiana, as indicated by the business in its written description of the use of proceeds. Such written description shall demonstrate that one or more of the following economic indicators will likely result from the qualified investment provided by the CAPCO:

i. an estimated increase in the number of Louisiana jobs or the retention of Louisiana jobs;

ii. an estimated increase or expansion in production facilities or operation facilities within Louisiana as a result of the funding;

iii. an estimated benefit to the Louisiana economy resulting from increased export trade directed through Louisiana ports;

iv. an estimated increase in overall sales or production volume in the business; or

v. any other estimated economic benefits to the state of Louisiana.

b. will use the proceeds in the furtherance of its business and will not advance any proceeds to any of its affiliates, as defined in §303, unless prior written approval has been granted by the commissioner. The commissioner will approve such advances only when a direct economic benefit to the state of Louisiana will result from such advances.

2. An agreement that the business will submit to the CAPCO, upon application and annually thereafter, copies of its federal and Louisiana income tax returns.

3. An agreement that the business will submit to the CAPCO, upon application and annually thereafter, a listing of the total number of Louisiana and non-Louisiana employees.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1926, 1927 and 1928.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

**§321. Reports to the Office of Financial Institutions (formerly LAC 13:I.721)**

On forms provided by OFI or in a manner approved by OFI, each CAPCO shall report to OFI, on or before January 31, selected information for each qualified investment made in the previous calendar year.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1926.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 10:872 (November 1984), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1050 (December 1989), amended LR 18:251 (March 1992), amended by the Department of Economic Development, Office of Financial Institutions, LR 20: (February 1994).

**LAC 13:I.723. 725 and 727 are hereby repealed in their entirety.**

Larry L. Murray  
Commissioner

**RULE**

**Department of Economic Development  
Racing Commission**

**Illegal Weapons and Firearms (LAC 35:I.1709)**

The Department of Economic Development, Racing Commission hereby adopts LAC 35:I.1709, Illegal Weapons and Firearms, since there has been no rule addressing this issue prior to this time, and it will help to protect the public from persons carrying dangerous and illegal weapons and firearms, which could present life-threatening situations.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 17. Corrupt and Prohibited Practices**

**§1709. Illegal Weapons and Firearms**

A. Except as otherwise provided for by this Section, the possession, carrying or use of a weapon, firearm, and/or explosive device within any restricted area, accessible only to permittees, is prohibited. Anyone found in violation of this Section shall be fined or suspended or both and may have his or her license revoked.

B. This Section does not apply to any person of the following categories:

1. any local, state or federal law enforcement officer;
2. any member of track security who is properly certified to carry a firearm and whose employment with an association is reported in writing to the commission.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 4:141 and 148.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Racing Commission, LR 20: (February 1994).

Paul D. Burgess  
Executive Director

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 741 - Handbook for School Administrators,  
Minimum Standards for Vocational Education  
(Nonpublic)**

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 an amendment to Standard 6.099.01 of Bulletin 741 to delete the parenthetical language, (Effective Beginning 1992-93 for Incoming Freshmen and Thereafter), since it is obsolete.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10).

Carole Wallin  
Executive Director

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 741—Handbook for School Administrators,  
Minimum Standards for Vocational Education  
(Nonpublic) Standard 6.016.14**

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 amended Bulletin 741 (Nonpublic), Louisiana Handbook for School Administrators, Standard 6.016.14 as stated below. This amendment supersedes the amendment to Standard 6.016.14 of Bulletin 741 which appeared as a notice of intent on page 799 of the June 1993 issue of the *Louisiana Register*, and includes a sentence which was inadvertently omitted from the existing policy.

**Revised Standard 6.016.14**

A nonpublic school principal, assistant principal, or headmaster must hold a master's degree in an area from an accredited institution or have principalship on his Louisiana teaching certificate. The principal is to be a full-time, on-site employee. (The principal and/or assistant principal may be a teacher as well as the educational administrator of the school.)

**Add as a Procedural Block:**

Assistant principals, who do not meet minimum qualifications, may be retained in a school provided they were employed in that school during the 1992-93 school year as an assistant principal.

**Add as a Procedural Block:**

A list of these assistant principals is to be maintained in the State Department of Education. Upon retirement or replacement, these assistant principals must be replaced with properly qualified personnel under the nonpublic school standards. These individuals may not be transferred or

employed by another school unless they meet the requirements stated in the above standard.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10).

Carole Wallin  
Executive Director

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 1706—Exceptional Children**

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 amended Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act (R.S. 17:1941), page 119, Part B, to add the pupil/teacher ratio for hospital classes 8-17, and the addition of 1 Itinerant as noted below:

**Part B.**

\* \* \*

**F. Hospital/Homebound Instruction (per teacher)**

- |              |      |
|--------------|------|
| 1. Itinerant | 5-10 |
| 2. One Site  | 8-17 |

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:1941 et seq.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 20: (February 1994).

This amendment was also adopted as an emergency rule and printed on page 1449 in the October, 1993 issue of the *Louisiana Register*.

Carole Wallin  
Executive Director

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 1822—Competency Based Postsecondary  
Curriculum Outlines**

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 amended Bulletin 1822, Competency Based Postsecondary Curriculum Outlines.

**Currently Approved**

| <b>Course Title</b>            | <b>Length</b>      |
|--------------------------------|--------------------|
| Graphic Arts                   | 1350 Hrs., 12 Mos. |
| Drafting and Design Technology | 2700 Hrs., 24 Mos. |
| Civil Engineering Technology   | 2250 Hrs., 20 Mos. |
| Commercial Art                 | 2700 Hrs., 24 Mos. |
| Motor Vessel Engineer          | 1350 Hrs., 12 Mos. |
| Plumbing                       | 1350 Hrs., 12 Mos. |

**Revised**

|                                 |                    |
|---------------------------------|--------------------|
| Graphic Arts/Desktop Publishing | 1872 Hrs., 18 Mos. |
| Graphic Arts/Process Printing   | 1872 Hrs., 18 Mos. |
| Drafting and Design Technology  | 2496 Hrs., 24 Mos. |
| Civil Engineering Technology    | 2080 Hrs., 20 Mos. |
| Commercial Art                  | 2496 Hrs., 24 Mos. |
| Motor Vessel Engineer           | 1248 Hrs., 12 Mos. |
| Plumbing                        | 1248 Hrs., 12 Mos. |

**Adjustments to Lengths Only**

**Title**

- Biomedical Equipment Technology
- Air Conditioning and Refrigeration
- Consumer Electronics Technician
- Electronics Technology
- Industrial Maintenance Technician
- Instrumentation

Present length of each of the above courses is 2700 hrs., 24 mos.

Revised length of each of the above courses is 2496 hrs., 24 mos.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

Carole Wallin  
Executive Director

**RULE**

**Board of Elementary and Secondary Education**

**Teacher Tuition Exemption**

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 adopted the Revised Teacher Tuition Exemption Regulations for FY 1993-94.

The Teacher Tuition Exemption Program is funded through the Louisiana Quality Education Support Fund (8g). Regulations for the Teacher Tuition Exemption Program are subject to administrative interpretation by the Louisiana Department of Education, Bureau of Continuing Education, and are incorporated into Bulletin 921. These regulations were adopted as an emergency rule, effective August 26, 1993, and printed in full in the September 1993 issue of the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.3

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 20: (February 1994).

Carol Wallin  
Executive Director

**RULE**

**Board of Elementary and Secondary Education**

**VTIE Certification Fee (LAC 28:I.903)**

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 amended LAC 28:I.903 to include a five-year renewal certification fee for VTIE certification.

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
§903. Teacher Certification Standards and Regulations**

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**G. Fee Schedule for Certificates**

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**1. Initial Certification Application Fee**

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**c. VTIE**

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**v. Five-year renewals \$25**

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 20: (February 1994).

Carole Wallin  
Executive Director

**RULE**

**Department of Environmental Quality  
Office of Air Quality and Radiation Protection  
Air Quality Division**

**Control of Emissions of Nitrogen Oxides (NO<sub>x</sub>)  
(LAC 33:III.2201, 2203, 2205) (AQ81)**

Under the authority of the Louisiana Environmental Quality Act, particularly R.S. 30:2051 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division Regulations, LAC 33:III.Chapter 22, (AQ81).

This regulation relates to the control of emissions of Nitrogen Oxides (NO<sub>x</sub>) by Reasonably Available Control Technology (RACT) and applies to specific sources of nitrogen oxides at any major stationary sources within a moderate or higher nonattainment area.

This will result in pollution reduction to reduce ozone of which NO<sub>x</sub> is a precursor. The Clean Air Act Amendments (CAAA) of 1990 mandate these changes which should result in a projected reduction of 20,000 tons per year of NO<sub>x</sub>.

This is in accordance with the CAAA of 1990, 40 CFR 52, §182(f), NO<sub>x</sub> requirements and required by directives of the U.S. Environmental Protection Agency.

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**Part III. Air**

**Chapter 22. Control of Emissions of Nitrogen Oxides**  
**§2201. General Provisions**

A. Reserved

B. Reserved

C. Definitions. Unless specifically defined in LAC 33:III.111, the terms in this Chapter shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise.

*Annual Capacity Factor*—the total annual fuel consumed by a unit divided by the fuel which could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

*Averaging Capacity*—the average actual heat rate in MMBtu/hr at which the unit operated during the two calendar years prior to the adoption date of this Chapter. (Another period may be used to calculate the averaging capacities upon demonstration to the department that this other period is more representative of normal anticipated operation.)

*Block One-hour Average*—an hourly average of data, collected starting at the beginning of one clock hour of the day and continuing until the start of the next clock hour.

*Boiler or Steam Generator*—any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam.

*Btu*—British thermal unit.

*Chemical Processing Gas Turbine*—a gas turbine that vents its exhaust gases into the operating stream of a chemical process.

*Coal*—all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials, Designation D388-77 (incorporated by reference—see LAC 33:III.3133). For the purposes of this Chapter, coal shall also include petroleum coke and solid carbon residues from the processing of petroleum products.

*Combined Cycle*—a combustion equipment configuration that includes a stationary gas turbine(s) and/or stationary internal combustion engine(s) that discharge(s) into an unfired waste heat recovery unit(s), possibly a supplemental firing unit(s), and/or possibly other equipment.

*Daily*—a calendar day starting at 12 midnight and continuing until 12 midnight the following day.

*Electric Power Generating System*—all boilers, steam generators, stationary internal combustion engines, and gas turbines used in an electric power generating system owned or operated by a municipality or a Louisiana Public Service Commission regulated utility that are located within a single ozone nonattainment area.

*Emergency Standby Gas Turbine or Engine*—a gas turbine or engine operated only as a mechanical or electrical power source for a facility when the primary power source has been rendered inoperable, except due to power interruption pursuant to an interruptible power supply agreement.

*Gas*—any gaseous fuel.

*Heat Input*—the chemical heat released due to fuel combustion in a unit, using the higher heating value of the

fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming carbon monoxide and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referred to the heat content at 60°F as being zero.

*High Heat Release*—a ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units (Btu) per hour per cubic foot.

*Horsepower Rating*—the engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

*Hp*—horsepower

*Incinerator*—any combustion equipment for the disposal of gaseous, liquid, or solid wastes which does not meet the definition of "boiler" in LAC 33.V.109.

*International Standards Organization (ISO) Conditions*—Standard conditions of 59°F, 1.0 atmosphere, and 60 percent relative humidity.

*Lean-burn Engine*—a spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration less than or equal to 0.5 percent by volume as originally designed by the manufacturer. The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.

*Low Annual Capacity Factor Boiler or Process Heater*—an industrial boiler or process heater with maximum rated capacity greater than or equal to 80 MMBtu/hr and an annual heat input less than or equal to  $2.2(10^{11})$  Btu/yr.

*Low Heat Release*—a ratio of boiler design heat input to firebox volume less than 70,000 Btu per hour per cubic foot.

*Major Source*—any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 100 tons per year of NO<sub>x</sub> in a moderate ozone nonattainment area and at least 50 tons per year of NO<sub>x</sub> in a serious nonattainment area.

*Maximum Rated Capacity*—the maximum design heat input, expressed in MMBtu/hr, unless:

a. the unit is a boiler or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate shall be used as the maximum rated capacity; or

b. the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition shall be used as the maximum rated capacity; or

c. the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions shall be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition shall be used as the maximum rated capacity; or

d. the unit is a stationary internal combustion engine, in which case the manufacturer's rated heat consumption at

Diesel Equipment Manufacturer's Association conditions shall be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition shall be used as the maximum rated capacity.

**Megawatt (MW) Rating**—the continuous MW rating or mechanical equivalent by a gas turbine manufacturer at ISO conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

**Nitric Acid**—nitric acid which is 30 to 100 percent in strength.

**Nitric Acid Production Unit**—any facility producing nitric acid by either the pressure or atmospheric pressure process.

**Nitrogen Oxides (NO<sub>x</sub>)**—the sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

**Nonattainment Area**—a single parish or a group of contiguous parishes that are classified moderate or higher in nonattainment of the National Ambient Air Quality Standard for ozone.

**Parts Per Million by Volume (ppmv)**—the volume ratio of a gaseous component to total gases excluding water vapor multiplied by 10<sup>6</sup>.

**Peaking Gas Turbine or Engine**—a stationary gas turbine or engine used intermittently to produce energy on a demand basis.

**Predictive Emissions Monitoring System (PEMS)**—a system that continuously calculates from process variables (such as firebox temperature, stack oxygen, ambient humidity, firing rate, and any others that influence NO<sub>x</sub> emissions) and records NO<sub>x</sub> emissions from a unit.

**Process Heater**—any combustion equipment fired with liquid and/or gaseous fuel which is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term process heater does not apply to any unfired waste heat recovery boiler that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers or steam generators as defined in this Section.

**Reformer**—a process heater designed to heat a mixture of hydrocarbons and steam for the purpose of reacting the mixture to hydrogen and oxides of carbon.

**Rich-burn Engine**—a spark-ignited, Otto cycle, four-stroke, naturally aspirated, or turbocharged engine capable of being operated with an exhaust stream oxygen concentration less than or equal to 0.5 percent by volume as originally designed by the manufacturer. The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.

**Shutdown**—the time period during which a piece of combustion equipment is taken from its normal operating conditions to ambient temperature or a cold temperature at which the equipment's motive power may be de-energized.

**Start-up**—the time period during which a piece of combustion equipment heats from ambient temperature or a

cold temperature at which the equipment's motive power was energized to its normal operating conditions.

**Stationary Gas Turbine**—any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation at a facility or is portable equipment operated at a specific facility for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft shall be treated as one unit.

**Stationary Internal Combustion Engine**—a reciprocating engine that is either attached to a foundation or if not so attached is operated or is intended to be operated at a single facility for more than six months, including any replacement engine for a specific application which lasts or is intended to last for more than six months.

**Supplemental Firing Units**—burners installed in the exhaust duct of a gas turbine or internal combustion engine to supply supplemental heat to a downstream unfired heat recovery boiler in the turbine exhaust.

**System**—for an electric power generating system, the units in a facility or facilities in a single nonattainment area that are included in an averaging plan under the provisions of LAC III:33.2203.E; for all other types of facilities, the units in a single facility that are included in an averaging plan according to the provisions of LAC 33:III.2203.E.

**System-wide Emission Limit**—the total average allowable nitrogen oxides emission limit for a system in lb NO<sub>x</sub>/MMBtu dischargeable into the atmosphere from affected units in a system when firing at their averaging capacities.

**Totalizing Fuel Meter**—a mechanical totalizing fuel meter or an electronic flow metering and totalizing system, or an equivalent system approved by the administrative authority.

**Unit**—any boiler, steam generator, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this Section.

**Wood**—wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

#### D. Reserved

#### E. Phased Reasonably Available Control Technology (RACT)

1. The owner or operator affected by the provisions of this Chapter who believes that compliance by May 31, 1995, is not practicable may submit a petition for phased RACT. The process for submitting a petition and receiving approval shall be based on the following:

a. The petition shall be submitted with the applicable initial control plan required in LAC 33:III.2203.G or 2205.E or as soon as possible after the initial control plan submission deadline upon a demonstration by the owner or operator that the petition was not submitted with the initial control plan or must be revised due to unforeseen circumstances (the department and the EPA will evaluate the rationale provided for a late submittal as part of the phased RACT approval process.)

b. The owner or operator of the proposed unit shall submit information to the Louisiana Department of

Environmental Quality and a copy to the U.S. Environmental Protection Agency (EPA) Regional Office in Dallas which will demonstrate all of the following:

i. compliance by May 31, 1995, is impracticable due to the unavailability of nitrogen oxides abatement equipment, engineering services, or construction labor; system unreliability; or other technological and economic factors (such as costs of additional outages necessitated by compliance with the emission specifications of this Chapter by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages, or a showing that meeting the applicable emission limits by May 31, 1995, would be economically unreasonable) as the administrative authority determines is appropriate;

ii. there is a proposed stage-by-stage program for compliance and clearly specified compliance milestones for each unit;

iii. there is a commitment to implement the portion of the phased RACT petition that can be implemented by May 31, 1995;

iv. the final compliance date specified in the petition shall be as soon as practicable, but in no case later than August 31, 1996; and

v. the petition for phased RACT shall contain the following information:

(a). the name, location, and nameplate capacity of the unit for which the petition is requested;

(b). a list of the company names, addresses, and telephone numbers of vendors who have been contacted to provide the services and equipment capable of meeting the applicable emission limitation under this Chapter. A copy of the request for bids along with the dates of contact shall also be provided to show a good-faith effort to obtain the required services and equipment necessary to meet the requirements of this Chapter by May 31, 1995;

(c). the following additional information:

(i). cost information, derived from equipment specifications and normal engineering practice, including the equipment provided and the services necessary for installation and excluding commercially sensitive financial information; and

(ii). scheduling information, including installation and test schedules;

(d). to demonstrate that the installation and availability of NO<sub>x</sub> emission control equipment are substantially contributing factors in causing system reliability problems, the following information shall be provided:

(i). standard load or production forecasts, based on standard forecasting models for the industry to which the subject unit belongs, applied to the period May 31, 1993, through May 30, 1995;

(ii). an outage schedule for all units in the utility grid or other operating system to which the subject unit belongs. An "operating system" shall refer to a group of like units for which, if one or more of the subject units were temporarily removed from service, the optimum rates of firing, production, or other general indicators of performance of the remaining units could not be maintained, resulting in problems with system reliability; and

(iii). specific reasons why an outage for the purpose of installing NO<sub>x</sub> emission control equipment cannot be scheduled by May 31, 1995.

c. The administrative authority shall approve a petition for phased RACT if the administrative authority determines that compliance is not practicable by May 31, 1995, because of the unavailability of nitrogen oxides abatement equipment, engineering services, or construction labor; system unreliability; or other technological and economic factors (such as costs of additional outages necessitated by compliance with the emission specifications of this Chapter by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages, or a showing that meeting the applicable emission limits by May 31, 1995, would be economically unreasonable) as the administrative authority determines is appropriate. The administrative authority shall also consider any potential effects on human health and the environment.

d. Approval of a phased RACT schedule by the administrative authority does not waive any applicable federal requirements or eliminate the need for approval by the EPA.

e. The holder of an approved phased RACT determination shall comply with each specified compliance milestone and each date for compliance provided in the approved petition, as well as any other condition established in the approval.

2. The administrative authority shall initiate a re-evaluation of the final compliance dates specified in this Chapter one year after the adoption of this Chapter. The administrative authority shall evaluate the practicability of all sources complying with LAC 33:III.2203.D and E and 2205.D by May 31, 1995. The administrative authority shall base the evaluation on the information contained in the control plans required by LAC 33:III.2203.G and 2205.E. In evaluating the practicability of compliance by May 31, 1995, the administrative authority shall take into consideration the availability of nitrogen oxides abatement equipment, engineering services, or construction labor; the system reliability of all affected units; or other technological and economic factors (such as costs of additional outages necessitated by compliance with the emission specifications of this Chapter by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages) as the administrative authority determines is appropriate. The administrative authority shall also consider any potential effects on human health and the environment. Within 15 months after adoption of this Chapter, the administrative authority shall publish notice in the Louisiana Register of the intent to either retain or extend by rulemaking the final compliance dates of this Chapter.

F. Rescission. If, after reviewing the results of the Urban Airshed Model for any nonattainment area, the department determines after conducting public hearings that the additional reductions of nitrogen oxides in the nonattainment area would not contribute to attainment of the National Ambient Air Quality Standards for ozone in that nonattainment area, then the administrative authority shall submit such findings and results to the U.S. Environmental Protection Agency administrator for a determination under Section 182(f) of the 1990 Federal Clean Air Act Amendments. If the EPA administrator

approves the department's finding, then the requirements of this Chapter shall be repropounded in rulemaking to address the findings of the EPA administrator as to the applicable NO<sub>x</sub> requirements.

#### G. Alternate Means of Compliance - Trading

1. The department may approve alternate means of compliance with this Chapter, including the use of emission reduction credits. The alternative compliance plan may include the trading of emission reduction credits between sources owned by the same company as well as between sources owned by different companies. Any alternative compliance plan may be approved if the administrative authority determines that it will provide substantially equivalent emission reductions to those required by this Chapter and satisfactory means for determining ongoing compliance with the approved alternative compliance plan, including monitoring. The department's approval does not necessarily constitute satisfaction of all federal requirements, nor eliminate the need for approval by the U.S. Environmental Protection Agency of any alternate method.

2. The administrative authority may consider the establishment of a bubble concept as an alternate means of compliance with this Chapter. A bubble concept plan submitted under this provision may be approved if the administrative authority determines that it will provide substantially equivalent emission reductions to those required by this Chapter and establishes satisfactory means for determining ongoing compliance with the bubble concept, including appropriate monitoring and recordkeeping requirements. The administrative authority shall give public notice upon receiving application for a bubble concept plan under this provision and shall receive public comments for a 30-day period before granting approval. The administrative authority's approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the EPA of any alternate method.

#### H. Permits

1. Unless notified by the administrative authority to the contrary, any person who submits a compliance plan pursuant to this Chapter is authorized to construct and operate the equipment specified in the compliance plan under the terms of the compliance plan 14 days after the date that the compliance plan is postmarked, if all required submissions have been made. The administrative authority may revoke the authorization to construct and operate at any time upon determining either that the compliance plan does not satisfy the provisions of this Chapter or that the terms of the compliance plan are not being followed.

2. The owner or operator of a unit subject to the provisions of this Chapter operating with a Louisiana air permit shall request a permit modification for the changes proposed in its compliance plan by September 30, 1995.

3. The owner or operator of a unit subject to the provisions of this Chapter operating without a Louisiana air permit or not fully permitted shall apply for a permit by September 30, 1995, for the changes proposed in its compliance plan. The owner or operator of such a source who is required to apply for a permit under Title V of the federal Clean Air Act Amendments of 1990 or under LAC

33:III.Chapter 51 may satisfy this requirement in an application under those programs, but the owner or operator must still submit such an application to satisfy this requirement by September 30, 1995.

4. For purposes of compliance with the Prevention of Significant Deterioration provisions of LAC 33:III.509 and the Nonattainment New Source Review Procedures of LAC 33:III.504, an increase in carbon monoxide emissions that satisfies the requirements listed below shall not constitute a physical change or a change in the method of operation. For purposes of compliance with the Standards of Performance for New Stationary Sources regulations at LAC 33:III.3127, an increase in carbon monoxide emissions that satisfies the requirements listed below shall satisfy the requirements of LAC 33:III.3127.E.5. (However, an increase in any pollutant other than carbon monoxide shall be subject to appropriate requirements of LAC 33:III.504, 509, 3127, or Chapter 51.)

a. Any modification must not result in an increase of the unit's or the facility's production capacity, as documented in accordance with LAC 33:III.2203.L and 2205.F, as applicable, except in the following cases:

i. for gas turbines, any increase in capacity must be a direct result of the requirement to implement controls on existing units required to meet emission limitations required by LAC 33:III.2203.D or E and must not exceed 14 percent of existing capacity for each affected existing turbine;

ii. for permitted equipment other than gas turbines, any increase in capacity must be a direct result of the requirement to implement controls on existing units previously permitted in accordance with the requirements of LAC 33:III.505 or 509 that are required to meet emission limitations required by this Chapter. Such units must remain in compliance with all terms and limitations of their permits and cannot utilize the increase in production capacity without satisfying the permitting requirements of LAC 33:III.505 or 509; or

iii. for grandfathered equipment other than gas turbines, any increase in capacity must be a direct result of the requirement to implement controls on existing units that are required to meet emission limitations required by this Chapter. Information regarding actual grandfather rates shall be provided in the compliance plan. The "actual grandfather rate" is the maximum rated capacity of the unit as of the 1990 emissions inventory. Such grandfathered units cannot exceed the actual grandfather rate for the unit and use the increase in production capacity without satisfying the permitting requirements of LAC 33:III.505 or 509.

b. Any emission increase of carbon monoxide must be a direct result of and incidental to installing NO<sub>x</sub> abatement equipment or implementing a NO<sub>x</sub> control technique.

c. If installation of NO<sub>x</sub> abatement equipment or implementation of a NO<sub>x</sub> control technique will result in a significant increase in representative actual annual emissions of carbon monoxide, information must be submitted sufficient to allow the department to determine that the following conditions will be met:

i. considering the NO<sub>x</sub> reductions that will result from implementation of the requirements of this Chapter, the emissions increase shall not cause or contribute to a violation



of any national ambient air quality standard; and

ii. the emissions increase shall not cause or contribute to a violation of a visibility limitation. For purposes of this Section, "significant increase" means an increase of emissions equal to or greater than the amount listed in the definition of "significant" in LAC 33:III.509.B.

d. Any emission increase in carbon monoxide must:

i. be quantified in the compliance plan; and

ii. be tested as required in LAC 33:III.2203.H or 2205.F, as applicable.

e. The applicant must present a carbon monoxide (CO) minimization plan, describing efforts to be taken to minimize increases in CO emissions that will result from installing NO<sub>x</sub> abatement equipment or implementing a NO<sub>x</sub> control technique. This CO minimization plan must be included in the compliance plan.

f. Any person wishing to make use of the provisions of Subsection H.4 of this Section shall send a letter of request to the Permits Section of the Air Quality Division of the Department of Environmental Quality containing the information required in Subsection H.4.c of this Section no later than 14 days prior to the commencement of construction for the installation of NO<sub>x</sub> abatement equipment or implementation of a NO<sub>x</sub> control technique. Such a person shall include with the compliance plan a statement of election to use Subsection H.4 of this Section, the CO minimization plan required in Subsection H.4.e of this Section, the information on increased emissions required in Subsection H.4.d of this Section, and the information on actual grandfather rates required in Subsection H.4.a.iii of this Section.

g. Following May 31, 1995, the department will review the initial compliance plans and the final compliance reports to ensure that any increases in CO emissions from NO<sub>x</sub> RACT controls will not cause or contribute to a violation of the National Ambient Air Quality Standard for carbon monoxide.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR:20 (February 1994).

### **§2203. Large Combustion Sources**

#### **A. Applicability**

1. The provisions of this Section shall apply to the following units located at any major source of nitrogen oxides (NO<sub>x</sub>) located within a serious nonattainment area:

a. boilers and process heaters with a maximum rated capacity of 80 MMBtu per hour or greater;

b. stationary gas turbines with a megawatt (MW) rating of 3.0 MW or greater; and

c. stationary internal combustion engines with a horsepower rating of 300 horsepower or greater.

2. The provisions of this Section shall apply to the following units located at any major source of NO<sub>x</sub> located within a moderate nonattainment area:

a. boilers and process heaters with a maximum rated capacity of 160 MMBtu per hour or greater;

b. stationary gas turbines with a megawatt rating of 6.0 MW or greater; and

c. stationary internal combustion engines with a horsepower rating of 600 horsepower or greater.

3. The provisions of this Section shall not apply to units located in an area that is marginal in nonattainment of the National Ambient Air Quality Standard for ozone.

#### **B. Exemptions**

1. Units exempted from the provisions of this Section include the following:

a. any new units placed into service after November 15, 1992;

b. any boiler or process heater with a maximum rated capacity of less than 80 MMBtu per hour in a serious nonattainment area or less than 160 MMBtu per hour in a moderate nonattainment area;

c. flares, incinerators, fume abaters, sulfur recovery units, and sulfur plant reaction boilers;

d. dryers, kilns, or ovens used for drying, baking, cooking, calcining, and vitrifying;

e. stationary gas turbines and engines, which are:

i. used in research and testing, used for purposes of performance verification and testing, used solely to power other engines or gas turbines during start-ups, operated exclusively for fire fighting and/or flood control, used in response to and during the existence of any officially declared disaster or state of emergency, used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals, or used as chemical processing gas turbines;

ii. used as emergency standby gas turbines which are demonstrated to operate less than 850 hours per calendar year (low annual capacity factor gas turbines) or engines which are demonstrated to operate less than 850 hours per calendar year (low annual capacity factor engines). The owner or operator of any engine or turbine using this exemption shall record the operating time with an elapsed run time meter; or

iii. used as peaking gas turbines or engines and operated less than 850 hours per calendar year. The owner or operator of any engine or turbine using this exemption shall record the operating time with instrumentation approved by the administrator. The owner or operator of any stationary gas turbine or engine exempt under this exemption must notify the department within seven days if the hour-per-year limit is exceeded. If the hour-per-year limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after loss of the exemption, the owner or operator must submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible but no later than 24 months after exceeding the hour-per-year limit. Included with this compliance plan, the owner or operator must submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the department;

f. stationary gas turbines with a megawatt (MW) rating of less than 3.0 MW in a serious nonattainment area or 6.0 MW in a moderate nonattainment area;

g. stationary internal combustion engines with a horsepower rating of less than 300 hp in a serious nonattainment area or 600 hp in a moderate nonattainment area;

h. any low annual capacity factor boiler or process heater as defined in LAC 33:III.2201.C. The owner or operator of any boiler or process heater using this exemption shall install and maintain totalizing fuel meters, with instrumentation approved by the administrative authority, and record the fuel input for each unit on a calendar year basis. The owner or operator of any boiler or process heater covered under this exemption must notify the administrative authority within seven days if the Btu-per-year limit is exceeded. If the Btu-per-year limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the Btu-per-year limit. Included with this compliance plan, the owner or operator must submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the administrative authority;

i. boilers and industrial furnaces which are regulated as existing facilities under LAC 33.V.30;

j. unfired waste heat recovery units on gas turbines or internal combustion engines and supplemental firing units used in turbine or internal combustion engine exhaust ducts;

k. any unit during start-up and shutdown;

l. any unit used solely to start up a process;

m. any unit firing chemical woodpulp, rice hulls, or bagasse as its primary fuel; and

n. any unit at a sugar mill.

2. The following units are exempted from the emissions specifications of Subsection D of this Section, although they may be included in an averaging plan as provided in Subsection E of this Section: fluid catalytic cracking units (including CO boilers).

C. Reserved

D. Emission Specifications

1. The following limits shall apply to boilers and process heaters:

| Fuel <sup>(2)</sup> | Device                                     |                            | Emission Limit (lb/MMBtu) |       |
|---------------------|--|----------------------------|---------------------------|-------|
| Gas                 | Wall-fired boilers, low heat release       | Air Preheat Temp (°F)      |                           |       |
|                     |  | < 200                      | 0.10                      |       |
|                     |  | > = 200 and < 400          | 0.15                      |       |
|                     | Wall-fired boilers, high heat release      | > = 400                    | 0.20                      |       |
|                     |  | < 200                      | 0.20                      |       |
|                     |  | > = 200 and < 400          | 0.24                      |       |
|                     | Process Heaters <sup>(1)</sup>             | > = 400                    | 0.28                      |       |
|                     |  | Tangentially-fired boilers |                           | 0.20  |
|                     |  | Air Preheat Temp. (°F)     | Firebox Temp. (°F)        |       |
|                     |  | < 200                      | < 1400                    | 0.10  |
|                     |  | —                          | > = 1400 and < 1800       | 0.125 |
|                     |  | > = 200 and < 400          | —                         | 0.13  |
|                     |  | —                          | > = 1800                  | 0.15  |
| Reformers           | > = 400                                    | —                          | 0.18                      |       |
| Oil                 | Tangentially-fired boilers <sup>(3)</sup>  |                            | 0.20                      |       |
|                     | Wall-fired boilers, process heaters        |                            | 0.30                      |       |
| Coal                | Tangentially-fired pulverized coal boilers |                            | 0.45                      |       |
|                     | Wall-fired pulverized coal boilers         |                            | 0.50                      |       |
| Wood                | Boilers and process heaters                |                            | 0.30                      |       |

(1) Where there is a choice, the owner may select the higher of the two limits.

(2) Any unit operated with a combination of gaseous, liquid, coal, or wood fuel shall comply with a variable emission limit calculated as the heat-input weighted average of the applicable emission limits of this Paragraph.

(3) Any tangentially-fired boiler which fires oil for 850 hours or less per year may apply a limit of 0.30 lb NO<sub>x</sub>/MMBtu for that oil.

2. No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 3.0 MW, emissions in

excess of an average concentration of 65 parts per million by volume (ppmv) NO<sub>x</sub> at 15 percent oxygen, dry basis, while firing gas and 75 ppmv NO<sub>x</sub> while firing oil. No person shall allow the discharge into the atmosphere from any stationary gas turbine used for peaking service, with an annual electric output in MW-hours of less than the product of 2,500 hours and the MW rating of the unit, NO<sub>x</sub> emissions in excess of 0.27 lb/MMBTU while firing natural gas and 0.37 lb/MMBTU while firing oil.

3. No person shall allow the discharge into the atmosphere from any gas-fired, rich-burn, stationary, reciprocating internal combustion engine, emissions in excess of an average of 2.0 grams NO<sub>x</sub> per horsepower hour (g NO<sub>x</sub>/hp-hr). Any person owning or operating any gas-fired, lean-burn, stationary, reciprocating internal combustion engine which is rated less than or equal to 2000 hp shall reduce NO<sub>x</sub> emissions to the extent practical by adjusting the air/fuel ratio and timing retard. Any person owning or operating any gas-fired, lean-burn, stationary, reciprocating internal combustion engine which is rated greater than 2000 hp shall install automatic control instrumentation to automatically adjust air/fuel ratio and timing retard according to load and other conditions to minimize NO<sub>x</sub> formation. In either case the lean-burn engine system shall be adjusted to minimize NO<sub>x</sub> formation at the engine's maximum rated capacity. The owner or operator shall quote the details of this adjustment at maximum rated capacity, including the engine speed, CO emissions, and NO<sub>x</sub> emissions in gm/hp•hr, in the final control report required in Subsection J of this Section. This tested NO<sub>x</sub> emissions rate in gm/hp•hr shall become the emissions limit permitted for the lean-burn engine.

4. The NO<sub>x</sub> emission limits specified in this Section shall apply at all times except as specified in Subsection B and E of this Section.

5. Any large combustion source which is an affected facility as defined by Standards of Performance for New Stationary Sources (NSPS), LAC 33:III.3103, shall be limited to the applicable NSPS NO<sub>x</sub> emission limit if that limit is more stringent than any defined elsewhere in Subsection D of this Section.

6. Each large combustion source placed into service prior to November 15, 1992, and subject to a NO<sub>x</sub> best available control technology review shall be subject to the permitted NO<sub>x</sub> limitation if it is more stringent than any defined elsewhere in Subsection D of this Section, as follows:

a. the limit explicitly stated in pound NO<sub>x</sub> per MMBtu of heat input by permit provision (converted from lower heating value to higher heating value, as necessary); or

b. the NO<sub>x</sub> emission limit is the limit calculated as the permit emission limit in pounds per hour, divided by the maximum heat input to the unit in MMBtu per hour (MMBtu/hr), as represented in the permit application. In the event the maximum heat input to the unit is not explicitly stated in the permit application, the rate shall be calculated from the permit application, using the design maximum fuel flow rate and higher heating value of the fuel or, if neither of the above are available, the unit's nameplate heat input.

7. For units which operate with continuous emission monitors or predictive emissions monitoring systems in

accordance with Subsection I.2 of this Section, the emission limits of this Section shall apply as the mass of nitrogen oxides (NO<sub>x</sub>) emitted per unit of heat input (pound NO<sub>x</sub> per MMBtu), on a rolling 30-day average period. For units which do not operate with continuous emission monitors or predictive emissions monitoring systems (PEMS), the emission limits shall apply as the mass of nitrogen oxides (NO<sub>x</sub>) emitted per unit of heat input (pound NO<sub>x</sub> per MMBtu) on a block one-hour average.

8. If a piece of any one type of large combustion equipment discharges in part or in whole to a piece of another type of combustion equipment, the portion discharging into the other piece of equipment shall be treated as emanating from the final piece of combustion equipment and shall be controlled to the same limit as that for the final piece of combustion equipment, while the portion discharging directly from the first piece of combustion equipment shall be controlled to the limit for the first piece of combustion equipment. The supplemental firing units and unfired waste heat recovery units in combined cycle installations are exempted from control by Subsection B.1.j of this Section. Thus a combined cycle unit including only turbines and/or engines in a parallel arrangement, supplemental firing units, and unfired waste heat recovery units shall be controlled at the appropriate limits for the turbines and/or engines alone.

9. Any gas-fired boiler, process heater, or gas turbine firing gaseous fuel which contains hydrogen and/or carbon monoxide over a given 24-hour period may apply a multiplier as calculated below to the appropriate emission limit given in Subsection D.1 or 2 of this Section for that 24-hour period. In order to apply this multiplier, the owner or operator of the unit must sample and analyze the fuel gas composition for hydrogen and/or carbon monoxide regularly. The owner or operator of the unit shall specify a sampling frequency for hydrogen and/or carbon monoxide in his compliance plan and give sufficient information to explain the technical basis for the sampling frequency chosen; except as provided in Subsection I.6 of this Section, the sampling frequency shall not in any case be less than once every 24 hours. The total hydrogen and/or carbon monoxide volume in all gaseous fuel streams is divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen and/or carbon monoxide in the fuel supply.

If (Vol. % H<sub>2</sub> + Vol. % CO) < = 50

Then

$$\text{fuel multiplier} = 1 + \frac{0.5 \times (\text{Vol. \% H}_2 + \text{Vol. \% CO})}{100}$$

Otherwise

$$\text{fuel multiplier} = 1.25$$

10. Any unit which has had a NO<sub>x</sub> reduction project permitted that was solely for the purpose of making an early NO<sub>x</sub> reduction shall be subject to the appropriate emission limit of Subsection D.1 through 3 of this Section. The affected person must document that the NO<sub>x</sub> reduction project was solely for the purpose of obtaining an early reduction and include this documentation in the initial control plan required in Subsection G of this Section.

33.III.Chapter 51 according to the procedures given in that Chapter.

E. Alternative System-wide Emission Specifications

1. An owner or operator may achieve compliance with the emission limits of Subsection D of this Section by achieving equivalent nitrogen oxides (NO<sub>x</sub>) emission reductions from compliance with a system-wide emission limit. Any owner or operator who elects to comply with a system-wide emission limit shall establish an enforceable emission limit for each affected unit at the source so that if all such units were operated at their averaging capacity, the system-wide emission rate of NO<sub>x</sub> from these units would not exceed the system-wide emission limit as defined below.

$$\sum_{i=1}^N (R_{ai} \times f_i) \leq SL$$

where:

i = each emission unit in the averaging group.

N = the total number of emission units in the averaging group.

SL = system-wide emission limit, lb NO<sub>x</sub>/MMBtu,

$$= \sum_{i=1}^N (R_{ii} \times f_i)$$

f<sub>i</sub> = fraction of total system averaging capacity for unit i,

$$= HI_i / SC = HI_i / \sum_{i=1}^N HI_i$$

SC = total averaging capacity of the system, MMBtu/hr,

$$= \sum_{i=1}^N HI_i$$

R<sub>ii</sub> = the limit for each individual unit from Subsection D of this Section, expressed in lb NO<sub>x</sub>/MMBtu.

R<sub>ai</sub> = the individual limit assigned by the owner or operator to each individual unit in the averaging plan, expressed in lb NO<sub>x</sub>/MMBtu.

HI<sub>i</sub> = the averaging capacity of each individual unit, that is, the average actual heat rate in MMBtu/hr at which the unit operated during the two calendar years prior to the adoption date of this Chapter. (Another period may be used to calculate the averaging capacities upon demonstration to the department that this other period is more representative of normal anticipated operation.)

The individual units in the averaging plan shall not exceed their assigned individual limits in lb NO<sub>x</sub>/MMBtu. However, the use of an averaging plan, by itself, shall not be construed to limit the maximum rated capacities of units in an averaging plan less than those already specified in their permits prior to the adoption of this rule. For units which operate with continuous emission monitors or predictive emissions

monitoring systems (PEMS) in accordance with Subsection I.2 of this Section, the assigned individual emission limits shall apply as the mass of NO<sub>x</sub> emitted per unit of energy input (lb NO<sub>x</sub>/MMBtu) on a rolling 30-day average period. For units which do not operate with continuous emission monitors or predictive emissions monitoring systems (PEMS), the assigned individual emission limits shall apply as the mass of NO<sub>x</sub> emitted per unit of energy input (lb NO<sub>x</sub>/MMBtu) on a block one-hour average. The units in an averaging plan are not expected to demonstrate compliance with the system-wide emission limit SL as a group; the quantity SL is merely used to calculate the new individual unit limits in the averaging plan.

2. An owner or operator of any gaseous and liquid fuel-fired unit which derives more than 50 percent of its annual heat input from gaseous fuel shall use only the appropriate gaseous fuel emission limit of Subsection D of this Section at maximum rated capacity in calculating the system-wide emission limit and shall assign to the unit the maximum allowable NO<sub>x</sub> emission rate while firing gas, calculated in accordance with Subsection E.1 of this Section. The owner or operator shall also:

a. comply with the assigned maximum allowable emission rate while firing gas only;

b. comply with the liquid fuel emission limit of Subsection D of this Section while firing liquid fuel only; and

c. comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing allowable emission rate and the liquid fuel emission limit of Subsection D of this Section while operating on liquid and gaseous fuel concurrently.

3. An owner or operator of any gaseous and liquid fuel-fired unit which derives more than 50 percent of its annual heat input from liquid fuel shall use a heat input weighted average of the appropriate gaseous and liquid fuel emission specifications of Subsection D of this Section in calculating the system-wide emission limit and shall assign to the unit the maximum allowable NO<sub>x</sub> emission rate, calculated in accordance with Subsection E.1 of this Section.

4. An owner or operator of any unit operated with a combination of gaseous (or liquid) and solid fuels shall use a heat input weighted average of the appropriate emission specifications of Subsection D of this Section in calculating the system-wide emission limit and shall assign to the unit the maximum allowable NO<sub>x</sub> emission rate, calculated in accordance with Subsection E.1 of this Section.

5. The owner or operator of exempted units as defined in Subsection B.2 of this Section may elect to include one or more of an entire equipment class of exempted units into the alternative system-wide emission specifications as defined in this Section. The equipment classes which may be included in the alternative system-wide emission specifications as an entire population of units at the major source include fluid catalytic cracking unit carbon monoxide (CO) boilers. Low annual capacity factor boilers or process heaters and low annual capacity factor gas turbines or engines as defined in LAC 33:III.2201.C and Subsection B.1.e and h of this Section are not to be considered as part of that class of equipment. The individual emission limits that are to be used in

calculating the alternative system-wide emission specifications are as follows: Fluid catalytic cracking unit CO boilers, 50 percent NO<sub>x</sub> reduction in the outlet NO<sub>x</sub> emissions after emission control procedures are implemented and/or emission control equipment is installed, with the outlet concentration in parts per million by volume converted into a pound (lb) NO<sub>x</sub>/MMBtu of heat input. (The individual emission limits must also be divided by the appropriate offset ratio for the type of nonattainment area in question; for a serious nonattainment area that ratio is 1.2 and for a moderate nonattainment area that ratio is 1.15.)

6. Solely for the purposes of calculating the system-wide emission limit, the allowable emission limit in lb NO<sub>x</sub>/MMBtu for each affected unit shall be calculated from the emission specifications of Subsection D of this Section, as follows:

a. the NO<sub>x</sub> emission limit (in lb NO<sub>x</sub>/MMBtu) for each affected stationary internal combustion engine is the applicable NO<sub>x</sub> emission specification of Subsection D of this Section (expressed in g/hp-hr) divided by the product of the engine manufacturer's rated heat rate (expressed in Btu/hp-hr) at the engine's hp rating at the engine's averaging capacity and 454(10<sup>-6</sup>);

b. the NO<sub>x</sub> emission limit (in lb NO<sub>x</sub>/MMBtu) for each affected stationary gas turbine is the product of the in-stack NO<sub>x</sub>, the turbine manufacturer's rated exhaust flow rate [expressed in lbs per hour at MW rating and International Standards Organization (ISO) conditions], the ratio of the averaging capacity in MMBtu/hr to the turbine heat rate in MMBtu/hr at the manufacturer's MW rating at ISO conditions, and (46/28)(10<sup>-6</sup>), divided by the turbine's averaging capacity in MMBtu/hr; where:

*In-stack NO<sub>x</sub> =*

$$NO_x(\text{allowable}) \times \left[ 1 - \frac{\%H_2O}{100} \right] \times \frac{20.9 - \%O_2 \times \left( 1 - \frac{\%H_2O}{100} \right)}{5.9}$$

where:

NO<sub>x</sub> (allowable) = the applicable NO<sub>x</sub> emission specification of Subsection D of this Section (expressed in ppmv NO<sub>x</sub> at 15% O<sub>2</sub>, dry basis).

%H<sub>2</sub>O = the volume percent of water in the stack gases, as calculated at MW rating and ISO conditions.

%O<sub>2</sub> = the volume percent of O<sub>2</sub> in the stack gases on a wet basis, as calculated at MW rating and ISO conditions.

7. The owner or operator of any gas-fired boiler or process heater firing gaseous fuel whose fuel gas composition is sampled and analyzed every 24 hours (or according to the sampling frequency specified in the compliance plan) for hydrogen (H<sub>2</sub>) and/or carbon monoxide (CO) may use a fuel multiplier calculated from Subsection D.9 of this Section times the emission limit assigned to the unit in this Section for that 24-hour period. The total H<sub>2</sub> and/or CO volume in all gaseous fuel streams shall be divided by the total gaseous fuel flow volume to determine the volume percent of H<sub>2</sub> and/or CO in the fuel supply.

8. At the time of each reasonable further progress milestone, the department shall audit all averaging plans to verify that the area-wide emission reductions actually achieved by the averaging plans in that year are equal to or greater than the reductions that would have been achieved by applying the individual unit emission limits of Subsection D of this Section. The department shall propose and promulgate revisions to this Chapter, or cause individual averaging plans to be revised as appropriate, to make up any shortfall discovered by this audit.

9. Lean-burn stationary internal combustion engines shall not be included in an averaging plan.

#### F. Operating Requirements

1. The owner or operator shall operate any unit included in an averaging plan according to Subsection E of this Section such that the assigned maximum nitrogen oxides (NO<sub>x</sub>) emission rate for each unit expressed in units of the applicable emission limit and averaging period is in accordance with the list approved by the administrative authority pursuant to Subsection J of this Section.

2. All units subject to the emission limitations of Subsection D or E of this Section shall be operated so as to minimize NO<sub>x</sub> emissions, consistent with the emission control techniques selected and combustion stability, over the unit's operating or load range during normal operations. Operational requirements include the following:

a. each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO<sub>x</sub> emissions shall be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range;

b. each boiler and process heater controlled with induced draft FGR to reduce NO<sub>x</sub> emissions shall be operated such that the operation of FGR over the operating range is not restricted by artificial means;

c. each unit controlled with steam or water injection shall be operated such that injection rates are maintained to limit NO<sub>x</sub> concentrations to less than or equal to the NO<sub>x</sub> concentrations achieved at maximum rated capacity (corrected to 15 percent O<sub>2</sub> on a dry basis for gas turbines);

d. each unit controlled with post-combustion control techniques shall be operated such that the reducing agent injection rate is maintained to limit NO<sub>x</sub> concentrations to less than or equal to the NO<sub>x</sub> concentrations achieved at maximum rated capacity;

e. each stationary internal combustion engine controlled with nonselective catalytic reduction shall be equipped with an automatic air-fuel ratio (AFR) controller which operates on exhaust O<sub>2</sub> or CO control and maintains AFR in the range required to meet the engine's applicable emission limits; and

f. each stationary internal combustion engine shall be checked for proper operation of the engine by recorded measurements of NO<sub>x</sub> and CO emissions at least quarterly and as soon as practicable after each occurrence of engine maintenance which may reasonably be expected to increase emissions, O<sub>2</sub> sensor replacement, or catalyst cleaning or catalyst replacement. Stain tube indicators specifically designed to measure NO<sub>x</sub> concentrations shall be acceptable for this documentation, provided a hot air probe or equivalent device is used to prevent error due to high stack temperature

and three sets of concentration measurements are made and averaged. Portable NO<sub>x</sub> analyzers shall also be acceptable for this documentation.

#### G. Initial Control Plan Procedures

1. The owner or operator of any major source which has units subject to Subsection D or E of this Section shall submit, for the approval of the administrative authority, an initial control plan, signed and dated by the owner or operator, for installation of nitrogen oxides (NO<sub>x</sub>) emissions control equipment to meet the requirements of Subsection D or E of this Section. The administrative authority shall approve the plan if it contains all the information specified in this Section and is accurate. Revisions to the initial control plan shall be submitted with the final control report. The initial control plan shall be submitted in accordance with the schedule specified in Subsection N of this Section and shall contain the following:

a. a list of all combustion units at the source with a maximum rated capacity greater than 5.0 million Btu per hour; all stationary, reciprocating internal combustion engines which are rated 300 hp or greater; and all stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW, to include the maximum rated capacity, anticipated annual capacity factor, the facility identification numbers as submitted to the permit section of the Louisiana Department of Environmental Quality, and the emission point numbers as listed on the emission inventory questionnaire for each unit;

b. identification of all units subject to the emission specifications of Subsection D or E of this Section;

c. identification of all boilers, process heaters, stationary gas turbines, or engines with a claimed exemption from the emission specifications of Subsection D or E of this Section and the rule basis for the claimed exemption;

d. identification of the election to use individual emission limits as specified in Subsection D of this Section or the system-wide emission limit specified in Subsection E of this Section to achieve compliance with this rule;

e. a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

f. a list of any units retired, decommissioned, or shutdown and rendered inoperable as a result of compliance with this regulation;

g. the basis for calculation of the rate of NO<sub>x</sub> emissions for each unit to demonstrate that each unit will achieve the NO<sub>x</sub> emission rates specified in Subsection D or E of this Section. For fluid catalytic cracking unit carbon monoxide (CO) boilers, the basis for calculation of the pound NO<sub>x</sub> per million Btu (lb NO<sub>x</sub>/MMBtu) rate for each unit shall include the following:

i. the calculation of the CO boiler heat input;

ii. the calculation of the appropriate CO boiler volumetric inlet and exhaust flowrates; and

iii. the calculation of the CO boiler lb NO<sub>x</sub>/MMBtu emission rate;

h. previous testing documentation for any claimed test waiver as allowed by Subsection H.4 of this Section;

i. results of emissions testing using portable analyzers or, as available, performance testing conducted in accordance

with Subsection H.5 or 6 of this Section for each unit subject to the testing requirements of Subsection H of this Section;

j. if the owner or operator has elected to use the provisions of LAC 33:III.2201.H.4, a notice to that effect for each affected piece of equipment, the CO minimization plan required in LAC 33:III.2201.H.4.e, the information on increased emissions required in LAC 33:III.2201.H.4.d, and the information on actual grandfather rates required in LAC 33:III.2201.H.4.a.iii; and

k. if the owner or operator plans to use ammonia or urea as a NO<sub>x</sub> reduction reagent, a certification of compliance with the ambient standard for ammonia in LAC 33:III. Chapter 51, according to the provisions of that Chapter.

#### H. Initial Demonstration of Compliance

1. All units which are identified in the control plan required by Subsection G of this Section and are subject to the emission limitations of Subsection D or E of this Section, shall be tested for nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and oxygen (O<sub>2</sub>) emissions while firing gaseous fuel (and, as applicable, hydrogen and/or carbon monoxide composition of the fuel for units using a fuel multiplier from Subsection D.9 of this Section). Units which inject urea or ammonia into the exhaust stream for NO<sub>x</sub> control shall be tested for ammonia emissions. Performance testing of these units shall be performed in accordance with the schedule specified in Subsection N of this Section.

2. The performance tests required by Subsection H.1 of this Section shall use the test methods referenced in Subsection H.5 or 6 of this Section and shall be used for determination of initial compliance with either the emission limits of Subsection D of this Section or the assigned emission limits of Subsection E of this Section, as applicable. Test results shall be reported in the units of the applicable emission limits and averaging periods.

3. Any continuous emissions monitoring system (CEMS) required by Subsection I.2 of this Section shall be installed and operational prior to conducting performance testing under Subsection H.1 of this Section. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

4. Testing conducted prior to the effective date of this rule may be used to demonstrate compliance with the standards specified in Subsection D or E of this Section, if the owner or operator of an affected facility demonstrates to the administrative authority that the prior performance testing at least meets the requirements of Subsection H.1, 2, 3, 5, and 6 of this Section. The administrative authority reserves the right to request performance testing or CEMS performance evaluation at any time.

5. Compliance with the emission specifications of Subsection D or E of this Section for units operating without CEMS or PEMS shall be demonstrated while operating at the maximum rated capacity, or as near thereto as practicable, by application of the following test methods:

a. Test Method 7E (40 CFR Part 60, Appendix A) or 20 (LAC 33:III.6075) for NO<sub>x</sub>;

b. Test Method 10 or 10B (40 CFR Part 60, Appendix A) or 10A (LAC 33:III.6052) for CO;

- c. Test Method 3A or 20 (LAC 33:III.6010 or 6075) for O<sub>2</sub>;
- d. Test Method 2 or 19 (LAC 33:III.6003 or 6073) for exhaust gas flow; and
- e. American Society of Testing and Materials (ASTM) Method D-1945-81, ASTM Method D-3588-81, or ASTM Method D-2650-83 for fuel composition; or
- f. EPA approved alternate test methods or minor modifications to these test methods as approved by the administrative authority.

6. Initial compliance with the emission specifications of Subsection D or E of this Section for units operating with CEMS in accordance with Subsection I.2 of this Section shall be demonstrated using the CEMS as follows: NO<sub>x</sub> emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO<sub>x</sub> emission limit. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period, that is, the average of the past 720 block one-hour averages.

7. The information required in this Subsection shall be provided in accordance with the schedule specified for submission of the initial control plan in Subsection N of this Section.

#### I. Continuous Demonstration of Compliance

1. The owner or operator shall install by the time of compliance, calibrate, maintain, and operate a totalizing fuel flow meter to measure the fuel usage on the following units:

- a. each boiler with a maximum rated capacity greater than or equal to 80 million Btu per hour (MMBtu/hr) and less than or equal to 250 MMBtu/hr and an annual heat input greater than 2.2(10<sup>11</sup>) Btu per year (Btu/yr); and
- b. each process heater with a maximum rated capacity greater than or equal to 80 MMBtu/hr and less than or equal to 250 MMBtu/hr and an annual heat input greater than 2.2(10<sup>11</sup>) Btu/yr.

2. The owner or operator shall install, calibrate, maintain, and operate a continuous exhaust NO<sub>x</sub> monitor, an O<sub>2</sub> or carbon dioxide diluent monitor, and a totalizing fuel flow meter on the units listed below in this Paragraph. The required continuous emissions monitoring systems and fuel flow meters will be used to measure NO<sub>x</sub> emissions for each affected unit. One CEMS may be used to monitor multiple units, provided each unit is sampled at least once every 15 minutes. Any CEMS shall meet all the requirements of LAC 33:III.3125, 6105 and 6107 and the quality assurance procedures of 40 CFR Part 60, Appendix F, Procedure 1, Section 5.1.2 (except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.2), or 40 CFR Part 75. The CEMS shall be subject to the approval of the administrative authority under any permit issued pursuant to Title V of the 1990 Federal Clean Air Act (FCAA) Amendments.

a. The CEMS shall be installed by the time of compliance with the emission limits specified in Subsection D or E of this Section for the following units:

- i. each boiler, process heater, and gas turbine with a maximum rated capacity greater than 250 MMBtu/hr and an annual heat input greater than 2.2(10<sup>11</sup>) Btu/yr; and
- ii. each unit for which the owner or operator elects to comply with the NO<sub>x</sub> emission specifications of Subsection D or E of this Section using a pound per MMBtu limit on a 30-day rolling average.

b. The owner or operator shall perform stack tests for CO, and ammonia if urea or ammonia is used as a reducing reagent, at the time of CEMS performance evaluation.

c. Instead of a CEMS, the owner or operator may install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter. The required PEMS and fuel flow meters shall be used to measure NO<sub>x</sub> and diluent (O<sub>2</sub> or CO<sub>2</sub>) emissions and fuel flow for each affected unit and shall be used to demonstrate continuous compliance. As alternatives to using PEMS to monitor diluent (O<sub>2</sub> or CO<sub>2</sub>), a CEMS for diluent according to Subsection I.2 of this Section or similar alternative method approved by the administrative authority may be used. The PEMS shall be installed and initially certified in accordance with Subsection I.2.c.iii of this Section. Any PEMS shall meet the requirements of Subsection L of this Section and all the requirements of 40 CFR Part 75, Subpart E except:

i. variations to 40 CFR Part 75, Subpart E which the owner or operator demonstrates to the satisfaction of the administrative authority to be substantially equivalent to the requirements of 40 CFR Part 75, Subpart E;

ii. requirements of 40 CFR Part 75, Subpart E which the owner or operator demonstrates to the satisfaction of the administrative authority are not applicable;

iii. for the initial certification of any unit while firing its primary fuel, the owner or operator shall:

(a). conduct initial relative accuracy test audits (RATA) pursuant to LAC 33:III.6105 and 6107 at each load level described in 40 CFR 75.41(a)(4)(i-iii), and

(b). conduct an F-test, a t-test, and a correlation analysis pursuant to 40 CFR Part 75, Subpart E at each load level described in 40 CFR 75.41(a)(4)(i-iii). Calculations must be based on a minimum of 24 successive emission data points at each load range which are either 20-minute averages or hourly averages;

iv. for each of the three successive quarters following the quarter in which initial certification was conducted, demonstrate accuracy and precision of PEMS for at least one unit of a category of equipment by performing RATA and statistical testing in accordance with Subsection I.2.c.iii of this Section; and

v. for each alternative fuel fired in a unit, the PEMS shall be certified in accordance with Subsection I.2.c.iii of this Section.

3. In addition to the totalizing fuel flow meters specified in Subsection I.1 and 2 of this Section, the owner or operator shall install and maintain totalizing fuel flow meters on an individual unit basis on low annual capacity factor boilers and process heaters as defined in LAC 33:III.2201.C.

4. The owner or operator of any stationary gas engine subject to the emission specifications of Subsection D or E of this Section shall install and maintain a totalizing fuel flow



meter and perform biennial stack testing of engine emissions of NO<sub>x</sub> and CO, measured in accordance with the methods specified in Subsection H.5 of this Section. In lieu of performing stack sampling on a biennial calendar basis, an owner or operator may elect to install and operate an elapsed operating time meter and shall test the engine within 15,000 hours of engine operation after the previous emission test. The owner or operator who elects to test on an operating hour schedule shall submit in writing to the department biennially after the initial demonstration of compliance, documentation of the actual recorded hours of engine operation since the previous emission test and an estimate of the date of the next required sampling.

5. The owner or operator of any stationary gas turbine rated less than or equal to 250 MMBtu/hr maximum rated capacity at design MW rating and ISO conditions using steam or water injection to comply with the emission specifications of Subsection D or E of this Section shall either:

- a. install, calibrate, maintain, and operate a CEMS in compliance with Subsection I.2 of this Section; or
- b. install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system shall be accurate to within  $\pm 5.0$  percent. The steam-to-fuel or water-to-fuel ratio monitoring data shall constitute the method for demonstrating continuous compliance with the applicable emission specification of Subsection D or E of this Section.

6. The owner or operator of any gas-fired boiler, process heater, or gas turbine firing gaseous fuel for which a fuel multiplier from Subsection D.9 of this Section is used shall sample, analyze, and record every 24 hours (or according to the sampling frequency specified in the compliance plan) the fuel gas composition to comply with the emission specifications of Subsection D or E of this Section. The total H<sub>2</sub> and/or CO volume flow in all gaseous fuel streams to the unit will be divided by the total gaseous volume flow to determine the volume percent of H<sub>2</sub> and/or CO in the fuel supply to the unit. Fuel gas analysis shall be tested according to American Society of Testing and Materials (ASTM) Method D-1945-81 or ASTM Method D-2650-83, or other methods which are demonstrated to the satisfaction of the administrative authority to be equivalent. A gaseous fuel stream containing 99 percent H<sub>2</sub> and/or CO by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this Section:

- a. a fuel gas analysis must be performed initially using one of the above test methods to demonstrate that the gaseous fuel stream is 99 percent H<sub>2</sub> and/or CO by volume or greater;
- b. the process flow diagram of the process unit which is the source of the H<sub>2</sub> and/or CO shall be supplied to the department to illustrate the source and supply of the hydrogen and/or carbon monoxide stream;
- c. the owner or operator shall certify that the gaseous fuel stream containing H<sub>2</sub> and/or CO will continuously remain, as a minimum, at 99 percent H<sub>2</sub> and/or CO by volume or greater during its use as a fuel to the combustion unit.

7. After the initial demonstration of compliance required by Subsection H of this Section, compliance with either Subsection D or E of this Section, as applicable, shall be

determined by the methods required in this Section. Compliance with the emission limitations may also be determined at the discretion of the administrative authority using any department compliance method.

8. If the owner or operator of a major source does not select compliance with the provisions of Subsection E of this Section, he must comply with the provisions of Subsection D of this Section. If compliance with Subsection D of this Section is selected, no unit subject to Subsection D of this Section shall be operated at an emission rate higher than that allowed by the emission specifications of Subsection D of this Section. If compliance with Subsection E of this Section is selected, no unit subject to Subsection E of this Section shall be operated at an emission rate higher than that approved by the administrative authority pursuant to Subsection J.2.b of this Section.

9. The owner or operator of any low annual capacity factor boiler or process heater as defined in LAC 33:III.2201.C must notify the administrative authority within seven days if the Btu/yr limit is exceeded. If the Btu/yr limit is exceeded, the exemption from the emission specifications of Subsection D.1.a of this Section shall be permanently withdrawn. Within 30 days after loss of the exemption, the owner or operator must submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible but no later than 24 months after exceeding the Btu/yr limit. Included with this compliance plan, the owner or operator must submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the administrative authority.

#### J. Final Control Report Procedures

1. For sources complying with Subsection D of this Section, the owner or operator of an affected source shall submit a final control report to show compliance with the requirements of Subsection D of this Section by the date specified in Subsection N of this Section. The report shall include a list of all affected units showing the method of control of nitrogen oxides (NO<sub>x</sub>) emissions for each unit and the results of testing required in Subsection H of this Section.

2. For sources complying with Subsection E of this Section, the owner or operator of an affected source shall submit a final control report, signed and dated by the owner or operator, to show attainment of the requirements of Subsection E of this Section by the date specified in Subsection N of this Section. The owner or operator shall:

- a. assign to each affected unit the maximum allowable NO<sub>x</sub> emission rate in pound per million Btu along with an appropriate averaging time, depending on whether or not the unit operates with a CEMS or PEMS) which are allowable for that unit under the requirements of Subsection E of this Section;

- b. submit a list to the administrative authority for approval of the maximum allowable NO<sub>x</sub> emission rates identified in Subsection J.2.a of this Section and maintain a copy of the approved list for verification of continued compliance with the requirements of Subsection E of this Section; and

c. submit a list summarizing the results of testing of each unit at maximum rated capacity, in accordance with the requirements of Subsection H of this Section.

3. The department reserves the right to request additional performance testing, CEMS performance evaluation, or other information that it believes appropriate with the final control report.

K. Revision of Final Control Report. A revised final control report may be submitted by the owner or operator, along with any required permit applications. Such a report, signed and dated by the owner or operator, shall adhere to the emission limits and the final compliance dates of this Section. New units, including functionally identical replacement units, shall not be incorporated into the report. The revision of the final control report shall be subject to the review and approval of the administrator. The department reserves the right to request additional performance testing, CEMS performance evaluation, or other appropriate information with the revised final control report.

L. Notification, Recordkeeping, and Reporting Requirements

1. The owner or operator of an affected source shall submit to the administrative authority notification of the date of any performance testing conducted under Subsection H of this Section and notification of the date of any continuous emissions monitoring system performance evaluation conducted under Subsection I of this Section at least 30 days prior to such date.

2. The owner or operator of an affected unit shall furnish the administrative authority a written report of any performance testing conducted under Subsection H of this Section or any CEMS performance evaluation conducted under Subsection I of this Section, within 45 days after completion of such testing or evaluation.

3. The owner or operator of a unit required to install a CEMS or water-to-fuel or steam-to-fuel ratio monitoring system under Subsection I of this Section shall report in writing to the administrative authority on a quarterly basis any exceedance of the applicable emission limitations in Subsection D or E of this Section and the monitoring system performance. All reports shall be postmarked or received by the thirtieth day following the end of each calendar quarter. Written reports shall include the following information:

a. the magnitude of excess emissions computed in accordance with LAC 33:III.3125.H, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with Subsection I.5.b of this Section, excess emissions are computed as each one-hour period during which the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial performance test required by Subsection H of this Section;

b. specific identification of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the affected unit; the nature and cause of any

malfunction (if known); and the corrective action taken or preventative measures adopted;

c. the date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks, and the nature of the system repairs or adjustments;

d. when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information shall be stated in the report;

e. if the total duration of excess emissions for the reporting period is less than one percent of the total unit operating time for the reporting period and the CEMS or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is less than five percent of the total unit operating time for the reporting period, only a summary report form shall be submitted, unless otherwise requested by the administrative authority. If the total duration of excess emissions for the reporting period is greater than or equal to one percent of the total operating time for the reporting period or the CEMS or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to five percent of the total operating time for the reporting period, a summary report and an excess emission report shall both be submitted.

4. The owner or operator of any engine subject to the emission limitations in Subsection D or E of this Section shall report in writing to the administrative authority on a quarterly basis any excess emissions and the air-fuel ratio monitoring system performance. All reports shall be postmarked or received by the thirtieth day following the end of each calendar quarter. Written reports shall include the following information:

a. the magnitude of excess emissions (based on the quarterly emission checks of Subsection F.2.f of this Section and the biennial emission testing required for demonstration of emissions compliance in accordance with Subsection I.4 of this Section), computed in pounds per hour and grams per horsepower hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

b. specific identification, to the extent feasible, of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the engine, catalytic converter, or air-fuel ratio controller; the nature and cause of any malfunction (if known); and the corrective action taken or preventative measures adopted.

5. The owner or operator of an affected unit shall maintain written records (or data on magnetic media, according to standards to be promulgated by the department) of all continuous emissions and PEMS monitoring and performance test results, hours of operation, and fuel usage rates. Such records shall be kept for a period of at least two years and shall be made available upon request by authorized representatives of the department or EPA. The emission monitoring (as applicable) and fuel usage records for each unit shall be recorded and maintained:

- a. on an hourly basis for units complying with an emission limit enforced on a block one-hour average;
- b. on a daily basis for units complying with an emission limit enforced on a rolling 30-day basis; and
- c. on a monthly basis for units exempt from the emission specifications based on annual heat input or hours of operation per calendar year.

M. **Alternative Case Specific Specifications.** Where a person can demonstrate that an affected unit cannot attain the requirements of Subsection D of this Section, as applicable, the administrative authority, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, as well as any potential effects on human health and the environment, may approve emission specifications different from Subsection D of this Section for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. A possibility that the department will consider is a plan to make a federally enforceable commitment to permanently remove a unit from service by May 31, 1997, and, in the interim between May 31, 1995, and May 31, 1997, to install some new NO<sub>x</sub> controls, use some new NO<sub>x</sub> control procedures, and/or limit the unit's operating rate. In determining whether to approve alternative emission specifications, the administrative authority may take into consideration the ability of the plant at which the unit is located to meet emission specifications through system-wide averaging. The administrative authority shall give public notice upon receiving an application for an alternative emission specification under this provision and allow a 30-day public comment period before granting approval. Approval of the administrative authority does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the U.S. Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable subsections of this Section.

**N. Compliance Schedule**

1. All persons affected by the provisions of this Section shall be in compliance as soon as practicable, but no later than May 31, 1995. All affected persons shall meet the following compliance schedules and submit written notification to the administrative authority:

- a. no later than May 20, 1994, submit a plan for compliance in accordance with Subsection G of this Section;
- b. install all nitrogen oxides (NO<sub>x</sub>) abatement equipment and implement all NO<sub>x</sub> control techniques no later than May 31, 1995;
- c. for units operating without CEMS or PEMS, conduct applicable tests for initial demonstration of compliance as specified in Subsection H of this Section and submit the results by May 31, 1995; and
- d. for units operating with CEMS or PEMS and complying with the NO<sub>x</sub> emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in Subsection H of this Section and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance

procedures as specified in Subsection I of this Section within 60 days after May 31, 1995.

2. In any area that will have been redesignated moderate or higher in nonattainment of the National Ambient Air Quality Standard for ozone after the promulgation of this rule, all persons newly affected by the provisions of this Section shall be in compliance as soon as practicable, but no later than 26 months after the redesignation of the area. All affected persons shall meet the following compliance schedules and submit written notification to the administrative authority:

- a. submit a plan for compliance in accordance with Subsection G of this Section no later than four months after redesignation;
- b. install all nitrogen oxides (NO<sub>x</sub>) abatement equipment and implement all NO<sub>x</sub> control techniques no later than 24 months after redesignation;
- c. conduct applicable tests for initial demonstration of compliance as specified in Subsection H of this Section and submit the results for units operating without CEMS or PEMS by 24 months after redesignation; and
- d. conduct the applicable tests for the initial demonstration of compliance as specified in Subsection H of this Section and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in Subsection I of this Section for units operating with CEMS or PEMS and complying with the NO<sub>x</sub> emission limit on a rolling 30-day average by 26 months after redesignation.

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR:20 (February 1994).

**§2205. Nitric Acid Manufacturing**

A. **Applicability.** The provisions of this Section shall apply to each nitric acid production unit in any moderate or higher ozone nonattainment area, except units required to comply with the New Source Performance Standard, LAC 33:III.3210 through 3214.

B. Reserved

C. Reserved

D. **Emission Specifications.** Each person subject to this Section shall comply with the provisions of LAC 33:III.3211 and 3212.

E. **Control Plan Procedures.** Any person affected by this Section shall submit a control plan to the administrative authority on the compliance status of all required emission controls and monitoring systems. The administrative authority shall approve the plan if it contains all the information specified in this Section and is accurate. Revisions to the control plan shall be submitted to the administrative authority for approval. The control plan shall provide a detailed description of the method to be followed to achieve compliance, specifying the anticipated dates by which the following steps will be taken:

- 1. dates by which contracts for emission control and monitoring systems will be awarded or dates by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

2. date of initiation of on-site construction or installation of emission control equipment or process modification;

3. date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

4. Date by which final compliance is to be achieved.

F. Initial and Continuous Demonstrations of Compliance; Notification, Recordkeeping, and Reporting Requirements. Each person subject to the provisions of this Section shall comply with the provisions of LAC 33:III.3213 and 3214.

G. Reserved

H. Reserved

I. Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of Subsection D of this Section, as applicable, the administrative authority, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, as well as the potential effects on human health and the environment, may approve emission specifications different from Subsection D of this Section for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. A possibility that the department will consider is a plan to make a federally enforceable commitment to permanently remove a unit from service by May 31, 1997, and, in the interim between May 31, 1995, and May 31, 1997, to install some new NO<sub>x</sub> controls, use some new NO<sub>x</sub> control procedures, and/or limit the unit's operating rate. The administrative authority shall give public notice upon receiving an application for an alternative emission specification under this provision and allow a 30-day public comment period before granting approval. Approval of the administrative authority does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the U.S. Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable subsections of this Section.

J. Compliance Schedule

1. All persons affected by the provisions of this Section shall be in compliance as soon as practicable, but no later than May 31, 1995. All affected persons shall meet the following compliance schedules and submit written notification to the administrative authority:

a. no later than May 20, 1994, submit a control plan for compliance as specified in Subsection E of this Section;

b. conduct applicable continuous emissions monitoring system performance evaluation and quality assurance procedures as specified in Subsection F of this Section and conduct applicable performance testing as specified in Subsection F of this Section, by May 31, 1995; and

c. within 60 days after the applicable date specified in Subsection J.1.b of this Section, submit the results of CEMS performance evaluation and quality assurance procedures and the results of performance testing specified in Subsection J.1.b of this Section.

2. In any area that will have been redesignated moderate or higher in nonattainment of the National Ambient Air Quality Standard for ozone after the promulgation of this rule,

all persons newly affected by the provisions of this Section shall be in compliance as soon as practicable, but no later than 26 months after the redesignation of the area. All affected persons shall meet the following compliance schedules and submit written notification to the administrative authority:

a. submit a control plan for compliance as specified in Subsection E of this Section within four months after redesignation;

b. conduct applicable continuous emissions monitoring system performance evaluation and quality assurance procedures as specified in Subsection F of this Section and conduct applicable performance testing as specified in Subsection F of this Section within 24 months after redesignation; and

c. submit the results of CEMS performance evaluation and quality assurance procedures and the results of performance testing specified in Subsection J.2.b of this Section within 26 months after redesignation.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR:20 (February 1994).

James B. Thompson, III  
Assistant Secretary

## RULE

### Department of Environmental Quality Office of Air Quality and Radiation Protection Radiation Protection Division

#### Application for Licensing of Radioactive Material (LAC 33:XV.Chapter 3 and Appendix E) (NE09)

Under the authority of the Louisiana Environmental Quality Act, particularly R.S. 30:2101 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Radiation Protection Division Regulations, LAC 33:XV.Chapter 3, (Log NE09).

This rule will amend the Radiation Protection Division's regulations concerning licensing of radioactive material. This rule will affect an applicant seeking a radioactive materials license in excess of the quantities set forth in Appendix E of LAC 33:XV.Chapter 3. This rule will incorporate standards set by the Nuclear Regulatory Commission in their federal rule published as final in the *Federal Register* (Volume 56, Number 98, Page 23391) on May 21, 1991. NRC states in their rule that "Agreement States" have three years to adopt these regulations. The deadline for Louisiana to adopt this rule is January, 1994.

These regulations are to become effective upon publication in the *Louisiana Register*.

**Title 33**  
**ENVIRONMENTAL QUALITY**

**Part XV. Radiation Protection**

**Chapter 3. Licensing of Radioactive Material**

**Subchapter D. Specific Licenses**

**§324. Filing Application for Specific Licenses**

\* \* \*

[See prior text A. - G.]

H. Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Appendix E (Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release) must contain either:

1. an evaluation showing that the maximum dose to a person off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

2. an emergency plan for responding to a release of radioactive material.

I. One or more of the following factors may be used to support an evaluation submitted under LAC 33:XV.324.H.1:

1. the radioactive material is physically separated so that only a portion could be involved in an accident;

2. all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

3. the release fraction in the respirable size range would be lower than the release fraction shown in Appendix E due to the chemical or physical form of the material;

4. the solubility of the radioactive material would reduce the dose received;

5. facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Appendix E.

6. operating restrictions or procedures would prevent a release fraction as large as that shown in Appendix E; or

7. other factors appropriate for the specific facility.

J. An emergency plan for responding to a release of radioactive material submitted under LAC 33:XV.324.H.2 must include the following information:

1. facility description. A brief description of the licensee's facility and area near the site;

2. types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed;

3. classification of accidents. A classification system for classifying accidents as alerts or site area emergencies;

4. detection of accidents. Identification of the means of detecting each type of accident in a timely manner;

5. mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining the equipment;

6. assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials;

7. responsibilities. A brief description of the

responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the division. Also, responsibilities for developing, maintaining, and updating the plan will be included;

8. notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the division immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency<sup>1</sup>;

9. information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the division;

10. training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical, and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios;

11. safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident;

12. exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises, although recommended, is not required. Exercises must use accident scenarios postulated as most probable for the specific site, and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedure, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected; and

13. hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, if applicable to the applicant's activities at the proposed place of use of the by-product material.

K. The licensee shall allow the off-site response organizations expected to respond in case of accident 60 days

to comment on the licensee's emergency plan before submitting it to the division. The licensee shall provide any comments received within the 60 days to the division with the emergency plan.

<sup>1</sup> These reporting requirements do not supersede or release licensees of complying with requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 20: (February 1994).

Appendix E

| Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release |                  |                   |
|---|------------------|-------------------|
| Radioactive Material <sup>1</sup>   | Release Fraction | Quantity (curies) |
| Actinium-228  | 0.001            | 4,000             |
| Americium-241   | .001             | 2                 |
| Americium-242   | .001             | 2                 |
| Americium-243   | .001             | 2                 |
| Antimony-124  | .01              | 4,000             |
| Antimony-126  | .01              | 6,000             |
| Barium-133  | .01              | 10,000            |
| Barium-140  | .01              | 30,000            |
| Bismuth-207   | .01              | 5,000             |
| Bismuth-210   | .01              | 600               |
| Cadmium-109   | .01              | 1,000             |
| Cadmium-113   | .01              | 80                |
| Calcium-45  | .01              | 20,000            |
| Californium-252   | .001             | 9 (20 mg)         |
| Carbon-14   | .01<br>NON CO    | 50,000            |
| Cerium-141  | .01              | 10,000            |
| Cerium-144  | .01              | 300               |
| Cesium-134  | .01              | 2,000             |
| Cesium-137  | .01              | 3,000             |
| Chlorine-36   | .5               | 100               |
| Chromium-51   | .01              | 300,000           |
| Cobalt-60   | .001             | 5,000             |
| Copper-64   | .01              | 200,000           |
| Curium-242  | .001             | 60                |
| Curium-243  | .001             | 3                 |
| Curium-244  | .001             | 4                 |
| Curium-245  | .001             | 2                 |
| Europium-152  | .01              | 500               |
| Europium-154  | .01              | 400               |
| Europium-155  | .01              | 3,000             |
| Germanium-68  | .01              | 2,000             |
| Gadolinium-153  | .01              | 5,000             |
| Gold-198  | .01              | 30,000            |
| Hafnium-172   | .01              | 400               |
| Hafnium-181   | .01              | 7,000             |
| Holmium-166m  | .01              | 100               |

| Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release |                  |                   |
|---|------------------|-------------------|
| Radioactive Material <sup>1</sup>   | Release Fraction | Quantity (curies) |
| Hydrogen-3  | .5               | 20,000            |
| Iodine-125  | .5               | 10                |
| Iodine-131  | .5               | 10                |
| Indium-114m   | .01              | 1,000             |
| Iridium-192   | .001             | 40,000            |
| Iron-55   | .01              | 40,000            |
| Iron-59   | .01              | 7,000             |
| Krypton-85  | 1.0              | 6,000,000         |
| Lead-210  | .01              | 8                 |
| Manganese-56  | .01              | 60,000            |
| Mercury-203   | .01              | 10,000            |
| Molybdenum-99   | .01              | 30,000            |
| Neptunium-237   | .001             | 2                 |
| Nickel-63   | .01              | 20,000            |
| Niobium-94  | .01              | 300               |
| Phosphorus-32   | .5               | 100               |
| Phosphorus-33   | .5               | 1,000             |
| Polonium-210  | .01              | 10                |
| Potassium-42  | .01              | 9,000             |
| Promethium-145  | .01              | 4,000             |
| Promethium-147  | .01              | 4,000             |
| Ruthenium-106   | .01              | 200               |
| Samarium-151  | .01              | 4,000             |
| Scandium-46   | .01              | 3,000             |
| Selenium-75   | .01              | 10,000            |
| Silver-110m   | .01              | 1,000             |
| Sodium-22   | .01              | 9,000             |
| Sodium-24   | .01              | 10,000            |
| Strontium-89  | .01              | 3,000             |
| Strontium-90  | .01              | 90                |
| Sulfur-35   | .5               | 900               |
| Technetium-99   | .01              | 10,000            |
| Technetium-99m  | .01              | 400,000           |
| Tellurium-127m  | .01              | 5,000             |
| Tellurium-129m  | .01              | 5,000             |
| Terbium-160   | .01              | 4,000             |
| Thulium-170   | .01              | 4,000             |

| Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release |                  |                   |
|---|------------------|-------------------|
| Radioactive Material <sup>1</sup>   | Release Fraction | Quantity (curies) |
| Tin-113   | .01              | 10,000            |
| Tin-123   | .01              | 3,000             |
| Tin-126   | .01              | 1,000             |
| Titanium-44   | .01              | 100               |
| Vanadium-48   | .01              | 7,000             |
| Xenon-133   | 1.0              | 900,000           |
| Yttrium-91  | .01              | 2,000             |
| Zinc-65   | .01              | 5,000             |
| Zirconium-93  | .01              | 400               |
| Zirconium-95  | .01              | 5,000             |
| Any other beta-gamma emitter  | .01              | 10,000            |
| Mixed fission products  | .01              | 1,000             |
| Mixed corrosion products  | .01              | 10,000            |
| Contaminated equipment beta-gamma   | .001             | 10,000            |
| Irradiated material, any form other than solid noncombustible   | .01              | 1,000             |
| Irradiated material, solid noncombustible   | .001             | 10,000            |
| Mixed radioactive waste, beta-gamma   | .01              | 1,000             |
| Packaged mixed waste, beta-gamma <sup>2</sup>   | .001             | 10,000            |
| Any other alpha emitter   | .001             | 2                 |
| Contaminated equipment, alpha   | .0001            | 20                |
| Packaged waste, alpha <sup>2</sup>  | .0001            | 20                |
| Combinations of radioactive materials listed above <sup>1</sup>   |                  |                   |

<sup>1</sup> For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Appendix E exceeds one.

<sup>2</sup> Waste packaged in Type B containers does not require an emergency plan.

James B. Thompson, III  
Assistant Secretary

**RULE**

**Department of Environmental Quality  
Office of the Secretary**

**Notification Regulations and Procedures for Unauthorized Discharges (LAC 33:I.Subpart 2)(OS17)**

Under the authority of the Louisiana Environmental Quality Act, particularly R.S. 30:2025(J) et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S.

49:950 et seq., the secretary has amended the Office of the Secretary Regulations, LAC 33:I.Subpart 2.Chapter 39, (Log OS17).

These amendments require notification to the Department of Environmental Quality of groundwater contamination resulting from any unauthorized discharge. They also add a definition of groundwater contamination (environmental) consistent with LAC 33:VII.115. Reportable quantities (RQs) of 1000 lbs for m-Cresol (D024) and 1 lb for lead (D008) under the characteristics of toxicity were inadvertently omitted in a previous rulemaking and are now being proposed.

These regulations are effective upon publication in the *Louisiana Register*.

### **Title 33**

## **ENVIRONMENTAL QUALITY**

### **Part I. Office of the Secretary**

#### **Subpart 2. Notification Regulations**

#### **Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges**

##### **Subchapter A. General**

##### **§3905. Definitions**

\* \* \*

*Groundwater Contamination*—the degradation of naturally occurring groundwater quality either directly or indirectly as a result of human activities.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), 30:2204(A), and 30:2373(B).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20: (February 1994).

##### **Subchapter C. Requirements for Prompt Notification**

##### **§3917. Notification Requirements for Unauthorized Discharges Which Do Not Cause an Emergency Condition**

A. In the event of an unauthorized discharge which exceeds a reportable quantity specified in Subchapter E of this Chapter but which does not cause an emergency condition, the discharger shall notify the appropriate division in the Department of Environmental Quality by telephone within 24 hours after learning of the discharge. Notification should be made between the hours of 8 a.m. and 4:30 p.m. on working days:

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), 30:2194(C), and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20: (February 1994).

##### **§3919. Notification Requirements for Unauthorized Discharges With Groundwater Contamination Impact**

In the event that any unauthorized discharge results in the contamination of the groundwaters of the state or otherwise moves in, into, within, or on any saturated subsurface strata, the discharger shall notify the appropriate division in the

department in writing in accordance with LAC 33:I.3925 within seven calendar days after obtaining knowledge of groundwater contamination.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), R.S. 30:2076(D), 30:2183(I), and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and amended LR 20: (February 1994).

##### **§3925. Written Notification Procedures for the Department of Environmental Quality**

A. Written reports for any unauthorized discharge that requires verbal notification under LAC 33:I.3915.A or 3917, or that requires written notification under LAC 33:I.3919 will be submitted by the discharger to the department in accordance with this Section within seven calendar days after the telephone notification required by LAC 33:I.3915.A or 3917, or within seven calendar days after obtaining knowledge of groundwater contamination as required by LAC 33:I.3919, unless otherwise provided for in a valid permit or other division regulations.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), 30:2194(C), and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20: (February 1994).

##### **Subchapter E. Reportable Quantities For Notification Of Unauthorized Discharges**

##### **§3927. Determination and Use of Reportable Quantity**

\* \* \*

C. The reportable quantity determined under this Subchapter, except where otherwise noted, will apply regardless of the environmental medium (land, air, water, groundwater) into which the pollutant is discharged.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), 30:2194(C) and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20: (February 1994).

##### **§3929. Radionuclides: Notification of Incidents**

The reportable quantity for all radionuclides will be determined in accordance with the Louisiana Radiation Regulations, LAC 33:XV.Chapter 4.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), R.S. 30:2076(D), 30:2183(I) and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20: (February 1994).



**Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges**

**§3931. Reportable Quantity List for Pollutants**

| Pollutant                  | CAS No. <sup>1</sup> | RCRA <sup>2</sup> Waste Number | Pounds |
|----------------------------|----------------------|--------------------------------|--------|
| ***                        |                      |                                |        |
| Characteristic of Toxicity | N.A.                 |                                |        |
| ***                        |                      |                                |        |
| m-Cresol (D024)            | N.A.                 |                                | 1000   |
| ***                        |                      |                                |        |
| Lead (D008)                | N.A.                 |                                | 1      |
| ***                        |                      |                                |        |

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2060(H), 30:2076(D), 30:2183(I), 30:2194(C), and 30:2204(A).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20: (February 1994).

James B. Thompson, III  
Assistant Secretary

**RULE**

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

**Payment of Death Benefits**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 11:3361 et seq., the Board of Trustees of the Firefighters' Pension and Relief Fund of New Orleans and Vicinity has adopted rules pertaining to the payment of death benefits.

**I. Definitions**

In accordance with R.S. 33:§3378, §3381, and related provisions and/or when used in these rules and regulations, the following terms shall have the following meanings:

**Accumulated Contributions**—contributions made by an active firefighter through monthly salary deductions. Interest shall accrue as determined by the board.

**Active Firefighter**—one who is still actively employed and has not yet retired.

**Actuarial Equivalent of the Participant's Benefit**—the actuarial cost of furnishing a single life benefit to the participant based on his years of service and salary as defined in §3384 and other applicable statutory provisions.

**Children**—children of the participant or of the surviving

spouse who are dependent upon the firefighter for support [§3378(D)].

**Deferred Vested Firefighter**—one who is vested by years of service but is no longer employed as a firefighter and is not yet receiving retirement benefits, whether or not he is yet eligible by age to retire.

**Dependent or Dependent upon the Firefighter for Support**—shall mean that prior to the firefighter's death, he or she contributed 50 percent or more to the support of said dependent.

**Legal Representatives**—the person or persons designated in the first of the following classes which is applicable to the deceased firefighter in question:

- a) the surviving spouse;
- b) the surviving children;
- c) the surviving parents;
- d) if a succession has been opened, the firefighter's estate or succession;
- e) the heirs.

**Vested Firefighter**—a person who has accumulated at least 20 years of continuous service under the new system, in accordance with §3381.

**Widow**—the surviving spouse to whom the firefighter is married at the time of death.

**Widowed Mother**—a parent of either sex who has survived the deaths of both the firefighter and the other parent. (§3390).

**II. Beneficiary Designations and Election of Retirement and Death Benefits**

1. At the time a firefighter elects to retire, his spouse, if any, shall be furnished a copy of his retirement application and any beneficiary designation attendant thereto.

2. Any designation of beneficiary made by a firefighter pursuant to the statute shall be made in writing by completing the applicable beneficiary designation form required by the board.

3. Whenever a retirement benefit election includes a survivor annuity in any amount, a certified copy of the said survivor's birth certificate shall be furnished as proof of age. The retiree shall keep the board advised at all times of all changes of address of himself and said beneficiary.

4. Each firefighter in the new system and any employee in the old system electing coverage in the new system shall designate a beneficiary in writing and deposit it with the board of trustees.

5. Any such designation of beneficiary may be changed at any time prior to retirement but such change shall have no effect until deposited in writing with the board of trustees.

6. If a firefighter dies without having designated a beneficiary in accordance with the statute and a benefit is payable thereunder, the applicable death benefit shall be paid to the firefighter's legal representatives as defined herein, in the order defined herein.

**III. Calculation of Death Benefits**

1. If a death benefit is payable as a result of the death of an eligible participant prior to retirement, the present value of his benefit shall be calculated as if he had retired on the day before he died, except where otherwise indicated in the statute or herein.

2. The fund's actuary shall be required and authorized to calculate all benefits payable in accordance with such assumptions as he shall have incorporated into the fund's actuarial valuations and reports; and the trustees' reliance upon his calculations of the amounts of retirement and death benefits payable shall be conclusive proof of the reasonableness of the trustees' decisions in this regard.

#### IV. Preretirement Death Benefits

##### A. Non-duty Deaths

1. If an actively employed firefighter in the new system or one in the old system electing coverage under the new system, who is eligible by age and service to retire, should die a non-duty death, and if he had been married for two years or more at the time of his death, the surviving spouse may elect one of the following death benefits:

1) the surviving spouse shall receive an annuity payable for the duration of her life and calculated as if the employee had retired prior to death [§3385, Option 2, penultimate paragraph]; or

2) the surviving spouse may alternatively receive a refund of the employee's accumulated contributions, in lump sum.

2. If an actively employed firefighter in the new system or one in the old system electing coverage under the new system, who is eligible by age and service to retire, should die a non-duty death, and if the firefighter had been married for less than two years or was unmarried at the time of his death, the designated beneficiary may elect one of the following death benefits:

1) the designated beneficiary shall receive an annuity payable for the duration of his or her life and calculated as if the employee had retired prior to death [§3385, Option 2, penultimate paragraph]; or

2) the designated beneficiary may alternatively receive a refund of the employee's accumulated contributions, in lump sum.

3. If an actively employed firefighter in the new system or one in the old system electing coverage under the new system, who is eligible by age and service to retire, should die a non-duty death, and if the firefighter had been married for less than two years or was unmarried at the time of his death, and if the firefighter has failed to designate a beneficiary to receive any death benefits payable, a refund of the employee's accumulated contributions, in lump sum, shall be paid to the person or persons who meet the trustees' definition of *Legal Representatives*, as defined in Article I.5 hereof.

Where no beneficiary has been designated, the legal representative shall receive a refund of the employee's contributions plus interest earned thereon.

4. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, who is not eligible by age and service to retire when he suffers a non-duty death, his designated beneficiary may elect payment to the statutory beneficiaries of the benefits set forth in §3378(A)(2) and §3378(B), or may elect to receive a refund of the employee's contributions.

5. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, who is not eligible by age and service to retire when

he suffers a non-duty death, and he fails to designate a beneficiary to receive any death benefits payable, a refund of the employee's accumulated contributions, in lump sum, shall be paid to the person or persons who meet the definition of *Legal Representatives*, as defined in Article I.5 hereof.

6. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, who is not eligible by age and service to retire when he suffers a non-duty death, and the firefighter is survived by dependent minor children or physically or mentally handicapped dependent children, each child will receive a death benefit set forth in §3378(A)(2).

##### B. On-duty Deaths

1. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, whether or not he is eligible by age and service to retire when he suffers death in the line of duty, the surviving spouse shall elect one of the following death benefits:

1) the surviving spouse shall receive an annuity payable for the duration of her life and calculated as if the participant had survived till he had 20 years service at the same salary and elected to retire under §2117.4, Option 2 with no reduction for age at the date of retirement. The Option 2 calculation shall be based on his age and the age of his widow at the date of death [§3385, last paragraph]; or

2) the surviving spouse may alternatively receive a refund of the employee's accumulated contributions, in lump sum.

2. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, whether or not he is eligible by age and service to retire when he suffers death in the line of duty, and if the employee is unmarried at the time of death, his designated beneficiary may elect one of the following death benefits:

1) the designated beneficiary shall receive an annuity payable for the duration of her life and calculated as if the participant had survived till he had 20 years service at the same salary and elected to retire under §3385, Option 2 with no reduction for age at the date of retirement. The Option 2 calculation shall be based on his age and the age of his designated beneficiary at the date of death [§3385, last paragraph]; or

2) the designated beneficiary may elect to receive a refund of the employee's accumulated contributions, in lump sum.

3. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, whether or not he is eligible by age and service to retire when he suffers death in the line of duty, and is unmarried at the time of death but has failed to designate a beneficiary, a refund of the employee's accumulated contributions, in lump sum, shall be payable to the person or persons who meet the trustees' definition of *Legal Representatives*, as defined in Article I.5 hereof.

Where no beneficiary has been designated, the legal representative shall receive a refund of the employee's contributions plus interest earned thereon.

#### V. General

1. A spouse or parent may receive only one pension [§3378.A(1)(2)].

2. Neither a retiree nor a surviving spouse shall receive a pension less than \$300 per month (§3383).

3. Once a firefighter has retired and elected an optional benefit under §3385, neither the designated joint annuitant nor the optional form of benefit may be changed. When the survivor designated as a joint annuitant dies, no further survivor benefit shall be payable.

4. No benefit or joint annuity payable under §3385 shall exceed the actuarial value of the participant's benefit.

5. Unless the benefit payable is a refund of the participant's own contributions together with any interest payable thereon, or is payable under §3378(B), no lump sum benefits shall be payable by this fund (R.S. 11:155).

William Carrouche  
Chairman

## RULE

Office of the Governor  
Division of Administration  
Office of Facility Planning and Control

Instructions for Preparation of Capital Outlay  
Budget Request Forms (LAC 34:III.201)

The Division of Administration, Facility Planning and Control Section has revised the Capital Outlay Request Forms and Instructions, and does hereby publish them in accordance with the provisions of R.S. 39:102.C and R.S. 49:950 et seq.

### Title 34

## GOVERNMENT CONTRACTS

### PROCUREMENT AND PROPERTY CONTROL

#### Part III. Facility Planning and Control

#### Chapter 2. Capital Outlay Budget Request Forms

#### §201. Instructions for Preparation of Capital Outlay Budget Request Forms

A. When preparing a five-year capital outlay plan, a first year request should reflect only those projects which must be funded next year. If a project can wait, it should be shown in years 2-5 of the request.

B. For projects other than those funded from self-generated cash, federal funds or dedicated revenues, the only anticipated source of funding available is the sale of general obligation bonds. It is, therefore, necessary to limit capital outlay projects which do not have a cash source of funding to those which have an anticipated useful life of 20 years or more and a value or cost of at least \$50,000. Examples of projects that qualify for inclusion in the capital outlay bill are:

1. land acquisition;
2. site development and improvement;
3. acquisition or construction of buildings or other structures;
4. additions of expansions to existing facilities;
5. major repair or renovation of existing facilities;
6. installation, extension or replacement of utility systems or major building system components;
7. roof replacement;

8. asbestos abatement;

9. fixed equipment which is connected to building utility systems;

10. initial equipment and furnishings for new buildings. However, depending on the useful life of equipment and furnishings, a decision may be made to fund these items through alternate sources.

C. Capital outlay requests should not include any of the following:

1. minor repair or renovation projects, such as painting, flooring, etc.;

2. minor roof repairs which do not extend the useful life of the roof;

3. movable equipment and furnishings, except that associated with new buildings;

4. vehicles of any type;

5. materials and supplies;

6. repair or renovation of minor building components, such as plumbing fixtures, locks, etc.;

7. routine maintenance of existing equipment.

D. All requests are due to Facility Planning and Control by November 1, and must be submitted through and prioritized by the appropriate governing authority. Each department should attach a summary sheet listing all requested projects in priority order by department. Project funding previously requested and appropriated in a prior year capital outlay act, but for which bonds were not sold in that prior year, must be requested again if the project funding is not reauthorized in the current outlay act.

E. Submit six hard copies of the budget request document and the completed diskette(s) (soft copy) along with a transmittal to: Division of Administration, Facility Planning and Control, State Capitol Annex, Room B-31, Post Office Box 94095, Baton Rouge, Louisiana 70804-9095. In addition, one duplicate hard copy set must be submitted at the same time to both the: Joint Legislative Capital Outlay Committee, 21st Floor, State Capitol, Post Office Box 94062, Baton Rouge, Louisiana 70804-9062; and Legislative Fiscal Office, 18th Floor, State Capitol, Post Office Box 94097, Baton Rouge, Louisiana 70804-9097.

1. For Years 2-5 Requests, the agency will need to complete only the "Recap Sheet" and the Section entitled "Demonstration of Need" (Screens 1-8 in the CORTS program).

2. If assistance is needed in completing the forms or using the CORTS software, contact Facility Planning and Control at (504) 342-0820 or LINC 421-0820.

F. Terms Used in Capital Outlay Requests

1. Schedule Number Department plus FACS agency number. For nonstate entities, search for a schedule number that applies. If one cannot be found, use schedule number 00-0000.

2. Class A Project Emergency. A capitol project can be classified as emergency if it is essential to alleviate conditions hazardous to life or property. Examples include extensive roof leaks, structural defects, accreditation or code violations, asbestos/hazardous material abatement, and extensive breakdown of HVAC systems.

3. Class B Project. Current Program Requirements—

needs that would allow an agency to bring its facilities up to program standards set by national or regional accrediting associations. Also, changes necessary to improve the functioning of a program belong in this classification. This would include measures to rectify inadequacies or the non-existence of facilities stipulated by accrediting associations required for program achievement. It would also include provisions for major alterations to meet or maintain current program requirements. Examples include addition of a new program, changes or relocation of an existing program.

4. **Class C Project. Anticipated Program Needs—** projects anticipated on the basis of increased enrollments, additional service, obsolescence of existing facilities, and changing an agency's role, scope or mission. Examples include addition of a new program, changes or relocation of an existing program.

5. **Project Title.** Give the project a concise, descriptive title. This title should be used on all correspondence, etc.

6. **Project Priority Number.** Assign a priority number to each new project request in keeping with the relative importance to the achievement of overall department goals. The priority number given a project must reflect the overall department priorities, not the priorities of a single institution.

7. **State Funds.** Include cash from the State General Fund.

8. **General Obligation Bonds.** Bonds or other evidences of indebtedness whose debt service is payable from the Bond Security and Redemption Fund.

9. **Reimbursement Bonds.** Special bonds whose debt service is payable by revenues derived from operation of the bond funded facility, e.g., a parking facility, toll bridge, laundry, etc.

10. **Self-Generated Funds.** Represents self-generated revenue from agency operations, e.g., license fees, admission fees, etc. or from statutory dedications.

11. **Federal Funds.** Any federal grant, loan, etc. that has been applied for, awarded, or received for the project.

12. **Local and Other Funds.** Any other type of financing not covered above, including interagency transfers, donations, etc. For non-state entities, indicate any local matching of funds here; this should include any local bond issue proceeds, millages, or other forms of local participation.

13. **Land Acquisition.** Cost of purchasing real property, including closing costs.

14. **Planning Cost.** Fee for professional services for planning. This figure should be 10 percent of construction cost.

15. **Construction Cost.** Cost of construction, renovation, repair, demolition or other work, excluding land acquisition, professional fees, and other costs. This should include the cost of all fixed equipment, such as bathroom fixtures, laboratory and kitchen equipment, etc.

16. **Miscellaneous.** Incidental expenses not listed above, including insurance, legal and testing. This figure should be 10 percent of the construction cost.

17. **Movable Equipment.** Furnishings and equipment which are not fixed to the building or facility. If funds for movable equipment are being requested for the current year, a detailed, itemized listing must be provided. It should

include a brief description of the equipment, the quantity of identical pieces, the estimated unit cost of each item, the estimated cost (sum of quantity times estimated unit cost), and the source from which the estimate was obtained.

18. **Net Area/Person.** Net area per person required to satisfy the function of the space type.

19. **Net Area Required.** Net area required for each functional space type (number of people times the net area per person required).

20. **Burden Factor.** Apply a percentage to the net area which reflects architectural burden for the facility; namely, circulation areas (corridors, elevators, stairs), janitorial and equipment rooms, public restrooms, interior and exterior walls and partitions, etc.

21. **Total Gross Area.** This is the product of the total net area times the burden factor percentage.

**PROJECT RECAP SHEET  
CAPITAL OUTLAY REQUEST FOR FY 1994-95  
PAGE - 1**

**PROJECT**

**REQUEST NUMBER** \_\_\_\_\_

|   |   |
|---|---|
| Title _____<br>Department Priority Number _____ of _____<br>A. Emergency Project _____<br>B. Current Project Requirements { }<br>C. Anticipated Program Needs { } | Location _____<br>Parish _____<br>Senate District _____<br>House District _____ |
|---|---|

**APPLICANT**

|                                  |                      |
|----------------------------------|----------------------|
| Schedule No. _____               | Site Code _____      |
| Department / Umbrella User _____ | State ID _____       |
| Agency / Management Board _____  | Representative _____ |
| Local User Facility _____        | Phone _____          |
|                                  | Head of Agency _____ |
|                                  | Phone _____          |
|                                  | Contact Person _____ |
|                                  | Phone _____          |

**FINANCIAL**

| TOTAL PROJECT COST ESTIMATE:  | Local User Request | Agency Request | Department Request | F.P. & C Revision |
|-------------------------------|--------------------|----------------|--------------------|-------------------|
| Land / Building Acquisition   | _____              | _____          | _____              | _____             |
| Planning Costs (10%)          | _____              | _____          | _____              | _____             |
| Construction Costs            | _____              | _____          | _____              | _____             |
| Hazardous Materials Abatement | _____              | _____          | _____              | _____             |
| Subtotal                      | _____              | _____          | _____              | _____             |
| Misc./Contingency Costs (10%) | _____              | _____          | _____              | _____             |
| Equipment Costs               | _____              | _____          | _____              | _____             |
| <b>Total</b>                  | 0                  | 0              | 0                  | 0                 |

**SOURCE OF FUNDING:**

| Previous Auth. Source | Amount | Year  | Act Number | Priority Level | Were Bonds Sold or Lines of Credit Granted ? |
|-----------------------|--------|-------|------------|----------------|--|
| _____                 | _____  | _____ | _____      | _____          | Bonds [ ] Credit [ ]                         |
| _____                 | _____  | _____ | _____      | _____          | Bonds [ ] Credit [ ]                         |
| _____                 | _____  | _____ | _____      | _____          | Bonds [ ] Credit [ ]                         |
| _____                 | _____  | _____ | _____      | _____          | Bonds [ ] Credit [ ]                         |
| <b>TOTAL (A)</b>      | 0      |       |            |                |  |

**PROPOSED FUNDING:**

| PROPOSED FUNDING: | First Year | Years 2-5 | Source of Funding       |
|-------------------|------------|-----------|-------------------------|
| State Funds       | _____      | _____     | Cash [ ] Rev. Bonds [ ] |
| Gen. Obl. Bonds   | _____      | _____     |                         |
| Reimb. Bonds      | _____      | _____     |                         |
| Self-Gen. Funds   | _____      | _____     |                         |
| Federal Funds     | _____      | _____     |                         |
| Other _____       | _____      | _____     |                         |
| <b>Total</b>      | (B) 0      | (C) 0     |                         |

Total Project Funding (A+B+C) \_\_\_\_\_ (Should Equal Total Project Estimated Cost)  
 Annual Operation & Maintenance Cost Increase (Decrease) \_\_\_\_\_ 0

**AGENCY IMPACT STATEMENT**

I hereby certify that this project/program has been reviewed, approved and integrated into our departments's long range strategic plan and five year budget. The impact of this project/program's operating budget on our budget has been approved by \_\_\_\_\_.

Head of Department Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
 Title: \_\_\_\_\_

**COMMENTS**

|       |
|-------|
| _____ |
| _____ |
| _____ |
| _____ |
| _____ |
| _____ |
| _____ |
| _____ |
| _____ |
| _____ |
| _____ |

**NEW PROJECT REQUEST  
CAPITAL OUTLAY REQUEST FOR FY 1994-95  
PAGE - 1**

**PROJECT**

|                            |
|----------------------------|
| Title _____                |
| Description _____<br>_____ |
| Programs Served _____      |
| Site Location _____        |

**DEMONSTRATION OF NEED**

Purpose or Objectives of Proposed Project (check as many as apply)

|  |  |
|--|--|
| <input type="checkbox"/> Expand Existing Program               | <input type="checkbox"/> Changes in Population Served                            |
| <input type="checkbox"/> Relocate Existing Program             | <input type="checkbox"/> To Address Code Violations, Court Orders, Accreditation |
| <input type="checkbox"/> Add New Program                       | <input type="checkbox"/> To Address Actual or Threatened Prop. Damage            |
| <input type="checkbox"/> Changes in Existing Program           | <input type="checkbox"/> Changes in Accepted Standards / Guidelines              |
| <input type="checkbox"/> Changes in Mission, Goals, Objectives | <input type="checkbox"/> Other _____   |

Describe \_\_\_\_\_  
\_\_\_\_\_

Program Service Description \_\_\_\_\_  
\_\_\_\_\_

Number of Employees Present \_\_\_\_\_ Citizens Served \_\_\_\_\_  
Future \_\_\_\_\_ Daily Users \_\_\_\_\_

Describe strategic long range plan for program (5 Yr?).  
\_\_\_\_\_  
\_\_\_\_\_

**APPLICABLE GUIDELINES / STANDARDS**  
List publications, regulatory agencies guidelines for the program.  
\_\_\_\_\_  
\_\_\_\_\_

Minimum or mandatory requirements of above listed for program.  
\_\_\_\_\_  
\_\_\_\_\_

What alternatives were considered?

|   |  |
|---|--|
| <input type="checkbox"/> Maintaining Status Quo | <input type="checkbox"/> Lease Space                             |
| <input type="checkbox"/> Use Existing Space     | <input type="checkbox"/> Renovation of Existing Space            |
| <input type="checkbox"/> New Space              | <input type="checkbox"/> Expansions of Similar Program Elsewhere |

How was best option determined (Studies, Etc.) ?  
\_\_\_\_\_

Were any feasibility studies or needs assesment reports prepared ?   
If so, please name contact person \_\_\_\_\_ Phone \_\_\_\_\_

List socioeconomic and environmental affects of project.  
\_\_\_\_\_

Identify and describe other similar facilities in your area and evaluate their capabilities to meet needs.  
\_\_\_\_\_  
\_\_\_\_\_

**ARCHITECTURAL PROGRAM**

Preparer \_\_\_\_\_ Date Prepared \_\_\_/\_\_\_/\_\_\_

| Type of Space | # | Occupants | Net Area / Person | Net Area Required |
|---------------|---|-----------|-------------------|-------------------|
|               |   |           |                   |                   |
|               |   |           | Net Area Req'd    | 0                 |

Net Area \_\_\_\_\_ X Burden Factor \_\_\_\_\_ = Total Gross Area Required \_\_\_\_\_

**TOTALS**

|                          |                           |
|--------------------------|---------------------------|
| _____ Employees          | _____ Temporary Employees |
| _____ Visitors / Clients | _____ Student / Assistant |
| _____ Contract Employees | _____ Other               |

NEW PROJECT REQUEST  
CAPITAL OUTLAY REQUEST FOR FY 1994-95  
PAGE - 2

**ARCHITECTURAL PROGRAM (Continued)**

Additional program requirements (Parking, Utilities Tie-In, Location, Shipping & Receiving, Public Access, Site Amenities, Etc.) Describe below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What is the length of time needed for planning ? \_\_\_\_\_  
Construction ? \_\_\_\_\_

**NEW CONSTRUCTION**

What will happen to existing facility? (Demolition, Renovation, Expansion of other programs)

\_\_\_\_\_  
How funded? \_\_\_\_\_

Has site been surveyed for underground storage tanks ?    
When ? \_\_\_\_\_

**RENOVATION / ADDITION**

Describe history and condition of building, extent and date of previous major renovations.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe the extent of the proposed renovation / addition.

\_\_\_\_\_  
\_\_\_\_\_

Where will the occupants be housed during construction ?

\_\_\_\_\_  
How funded? \_\_\_\_\_

What portion of the const. budget addresses modifications required to meet The Americans with Disabilities Act Guidelines (ADAG)? \_\_\_\_\_

What hazardous materials are addressed in the construction budget?  
 Underground Storage Tanks     PCB's     Asbestos  
 Lead Paint     Other \_\_\_\_\_

Has the facility's asbestos management plan been consulted for abatement requirements?    
Contact person \_\_\_\_\_

What is the current age and condition of the existing roof and estimated date of replacement? \_\_\_\_\_

For roofing projects, what is current condition of rooftop equipment & estimated date of replacement? \_\_\_\_\_

**CONSTRUCTION COSTS**

Source of Data \_\_\_\_\_ Date Prepared    /    /   

List special cost affecting factors considered (Unfinished Warehouse Space, Extraordinary HVAC, Etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COST OF CONSTRUCTION CALCULATION:**

| Type of Space      | Total Gross Area | Cost / S.F. | Total Cost |
|--------------------|------------------|-------------|------------|
|                    |                  |             |            |
|                    |                  |             |            |
|                    |                  |             |            |
| SubTotal / Average | 0                | 0.00        | 0          |

**NEW PROJECT REQUEST  
CAPITAL OUTLAY REQUEST FOR FY 1994-95  
PAGE - 3**

**COST OF CONSTRUCTION (Continued)**

| ADDITIONAL LINE ITEM EXPENSES (Parking, Utility Tie-In, Security System, Etc.) |           |            |
|--|-----------|------------|
| Item   | Unit Cost | Total Cost |
|  |           |            |
| SubTotal   |           | 0          |
| Total Construction Cost  |           | 0          |

**EQUIPMENT COSTS**

Source of Data \_\_\_\_\_ Date Prepared \_\_\_\_/\_\_\_\_/\_\_\_\_

**SUMMARY OF EQUIPMENT AND ESTIMATED COSTS:**

|       |   |
|-------|---|
|       | 0 |
|       | 0 |
|       | 0 |
|       | 0 |
|       | 0 |
| Total | 0 |

If this project is a current year request, attach an itemized breakdown with unit costs, estimated useful life of the equipment.

If this project is for renovation or relocation for an existing program, will existing equipment continue to be used ? [ ]  
If not, why? \_\_\_\_\_

**PROPOSED PROJECT FUNDING**

|                   | 94-95 | 95-96 | 96-97 | 97-98 | 98-99 | Total |
|-------------------|-------|-------|-------|-------|-------|-------|
| G.O. Bonds        | _____ | _____ | _____ | _____ | _____ | _____ |
| State Funds       | _____ | _____ | _____ | _____ | _____ | _____ |
| Reimb. Bonds      | _____ | _____ | _____ | _____ | _____ | _____ |
| Self-Gen Revenue  | _____ | _____ | _____ | _____ | _____ | _____ |
| Federal Funds     | _____ | _____ | _____ | _____ | _____ | _____ |
| Local&Other Funds | _____ | _____ | _____ | _____ | _____ | _____ |
| Total             | 0     | 0     | 0     | 0     | 0     | 0     |

**PROGRAM OPERATING & MAINTENANCE COSTS**

| BUDGET REQUEST SUMMARY<br>(Should match submittal to Office of Planning & Budget) | Current Year<br>Actual       | Annual Projected<br>Increase (Decrease)<br>After Project Completion |
|---|------------------------------|---|
| <b>Expenditures:</b>  |                              |   |
| Salaries  | _____                        | _____   |
| Other Compensation  | _____                        | _____   |
| Related Benefits  | _____                        | _____   |
| Travel  | _____                        | _____   |
| Operating Services  | _____                        | _____   |
| Supplies  | _____                        | _____   |
| Professional Services   | _____                        | _____   |
| Other Charges   | _____                        | _____   |
| Debt Services   | _____                        | _____   |
| Interagency Funds   | _____                        | _____   |
| Acquisitions  | _____                        | _____   |
| Major Repairs   | _____                        | _____   |
| Unallotted  | _____                        | _____   |
| <b>Total Expenditures</b>   | <b>0</b>                     | <b>0</b>  |
| <b>Means of Financing:</b>  |                              |   |
| State General Fund (Direct)   | _____                        | _____   |
| State General Fund by:  |                              |   |
| Interagency Transfers   | _____                        | _____   |
| Fees & Self-Gen. Revenues   | _____                        | _____   |
| Statutory Dedications   | _____                        | _____   |
| Interim Emergency Board   | _____                        | _____   |
| Federal Funds   | _____                        | _____   |
| <b>Total Means of Financing</b>   | <b>0</b>                     | <b>0</b>  |
| <b>Excess or (Deficiency) of Financing<br/>Over Expenditures</b>                  | <b>0</b><br>(Should Equal 0) | <b>0</b><br>(Should Equal 0)  |



PROGRAM OPERATING & MAINTENANCE COSTS (Continued)

|                           | 94-95 | 95-96 | 96-97 | 97-98 | 98-99 |
|---------------------------|-------|-------|-------|-------|-------|
| Total Expenditures        | 0     | 0     | 0     | 0     | 0     |
| Means of Financing:       |       |       |       |       |       |
| State Gen. Fund (Direct)  |       |       |       |       |       |
| State Gen. Fund By:       |       |       |       |       |       |
| Interagency Transfers     |       |       |       |       |       |
| Fees & Self-Gen. Revenues |       |       |       |       |       |
| Statutory Dedications     |       |       |       |       |       |
| Interim Emergency Board   |       |       |       |       |       |
| Federal Funds             |       |       |       |       |       |
| Total Means of Financing  | 0     | 0     | 0     | 0     | 0     |

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:102.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Section, LR 7:6 (January 1981), amended LR 20: (February 1994).

Roger Magendie  
Director

**RULE**

**Department of Health and Hospitals  
Board of Embalmers and Funeral Directors**

**Funeral Establishments (LAC 46:XXXVII.1107)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:840, notice is hereby given that the Department of Health and Hospitals, Board of Embalmers and Funeral Directors has amended LAC 46:XXXVII, Chapter 11, Funeral Establishments.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXXVII. Embalmers and Funeral Directors**

**Chapter 11. Funeral Establishments**

**§1107. Inspection**

\* \* \*

B. Each establishment must consist of and be inspected for an adequate building containing a display room, which must contain a minimum of six adult caskets, embalming room, office or arrangement room, rest rooms (separate for men and women), parlors or chapel. They shall also contain suitable furnishings, equipment and other facilities that meet the standards of the Fire and Sanitary Codes of the state of Louisiana as well as all city, parish and state licensing and zoning requirements.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:840.

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Embalmers and Funeral Directors, August 1966, amended November 1972, February 1973, amended and promulgated LR 4:227 (June 1978), amended LR 4:295 (August

1978), LR 4:356 (September 1978), LR 4:510 (December 1978), LR 5:278 (September 1979), LR 6:615 (October 1980), amended by the Department of Health and Hospitals, Board of Embalmers and Funeral Directors, LR 20: (February 1994).

Dawn Scardino  
Executive Director

## RULE

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

### Protection of Nursing Facility Residents' Funds

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts 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 provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

#### Rule

The Bureau of Health Services Financing adopts the following federal regulations incorporated in 42 CFR 483.10(c)(8) governing the protection of residents' funds in nursing facilities.

#### Limitation on Charges to Personal Funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare (except for applicable deductible and coinsurance amounts). The facility may charge the resident for requested services that are more expensive than or in excess of covered services in accordance with 42 CFR 489.32. (This does not affect the prohibition on facility charges for items and services for which Medicaid has paid. See 42 CFR 447.15, which limits participation in the Medicaid program to providers who accept, as payment in full, Medicaid payment plus any deductible, coinsurance, or copayment required by the plan to be paid by the individual.)

#### I. Services Included in Medicare or Medicaid Payment

During the course of a covered Medicare or Medicaid stay, facilities may not charge a resident for the following categories of items and services:

- A. nursing services as required by 42 CFR 483.30;
- B. dietary services as required by 42 CFR 483.35;
- C. an activities program as required by 42 CFR 483.15(f);
- D. room/bed maintenance services;
- E. routine personal hygiene items and services as required to meet the needs of residents, including but not limited to hair hygiene supplies, comb, brush, bath soap, disinfecting soaps or specialized cleansing agents when indicated to treat special skin problems or to fight infection, razor, shaving cream, toothbrush, toothpaste, denture adhesive, denture cleaner, dental floss, moisturizing lotion, tissues, cotton balls, cotton swabs, deodorant, incontinence care and supplies, sanitary napkins and related supplies,

towels, washcloths, hospital gowns, over the counter drugs, hair and nail hygiene services, bathing and basic personal laundry;

F. medically-related social services as required by 42 CFR 483.15(g).

#### II. Items and Services that may be Charged to Residents' Funds

Listed below are general categories and examples of items and services that the facility may charge to residents' funds if they are requested by a resident, if the facility informs the resident that there will be a charge, and if payment is not made by Medicare or Medicaid:

- A. telephone;
- B. television/radio for personal use;
- C. personal comfort items, including smoking materials, notions and novelties, and confections;
- D. cosmetic and grooming items and services in excess of those for which payment is made under Medicaid or Medicare;
- E. personal clothing;
- F. personal reading matter;
- G. gifts purchased on behalf of a resident;
- H. flowers and plants;
- I. social events and entertainment offered outside the scope of the activities program, provided under 42 CFR 483.15(f);
- J. noncovered special care services such as privately hired nurses or aides;
- K. private room, except when therapeutically required (for example, isolation for infection control);
- L. specially prepared or alternative food requested instead of the food generally prepared by the facility, as required by 42 CFR 483.35. (Note: Facilities must be in full compliance with the Nursing Facility - Standards for Payment for specific requirements regarding patient nourishment and dietary services prior to charging patients for such items.)

#### III. Requests for Items and Services

- A. The facility must not charge a resident (or his or her representative) for any item or service not requested by the resident.
- B. The facility must not require a resident (or his or her representative) to request any item or service as a condition of admission or continued stay.
- C. The facility must inform the resident (or his or her representative) requesting an item or service for which a charge will be made that there will be a charge for the item or service and what the charge will be.

Rose V. Forrest  
Secretary

## RULE

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

Standards for Payment for Inpatient Psychiatric Services -  
Distinct Part Psychiatric Units

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, hereby adopts the following rule as authorized by R.S. 46:153 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Effective March 1, 1994 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts criteria entitled *Standards for Payment, Distinct Part Psychiatric Units* which establish requirements for Medicaid reimbursement of distinct part psychiatric units, including alcohol and drug treatment units in general hospitals in this state. These criteria are required in addition to all existing state licensure, federal and state certification and accreditation standards for general hospitals. These standards address the following: programmatic setting and description including required services; staff composition and qualifications; diagnostic admission criteria and dimensional admission criteria; patient service needs; assessments; treatment plan and therapies; length of stay and continued stay criteria; discharge and aftercare planning; discharge criteria; records; quality assessment; support services; planning and evaluation; information management; utilization review; research; patient rights and facility policy applicable to patient neglect and abuse; and special treatment procedures. The standards for payments for these units also contain a provision for provider appeals.

Copies of this rule are available from the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802, (504) 342-5015.

Rose V. Forrest  
Secretary

## RULE

Department of Health and Hospitals  
Office of the Secretary  
Medical Disclosure Panel

Informed Consent (LAC 48:I.2315-2323)

As authorized by R.S. 40:1299.40E, as enacted by Act 1093 of 1990 and later amended by Act 962 of 1991 and Act 633 of 1993, the Department of Health and Hospitals, Louisiana Medical Disclosure Panel, is amending rules by adding §§2315-2323, which require which risks must be disclosed under the Doctrine of Informed Consent to patients undergoing

medical treatments or procedures and the Consent Form to be signed by the patient and physician before undergoing any such treatment or procedure. This amends rules adopted in the December 1992 issue of the *Louisiana Register*, pages 1391-1399, by adding §§2315-2323.

### Title 48

### PUBLIC HEALTH-GENERAL

#### Part I. General Administration

#### Chapter 23. Informed Consent

##### §2315. Cataract Surgery with or without Implantation of Intraocular Lens (placement of lens into eye)

- A. Loss of vision or decrease in vision;
- B. loss of eye;
- C. infection;
- D. bleeding inside or behind the eye;
- E. uncomfortable or painful eye;
- F. continued need for glasses;
- G. less attractive appearance, i.e. droopy eyelid;
- H. need for laser surgery to correct clouding of vision;
- I. need for additional treatment and/or surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

##### §2316. Glaucoma Surgery

- A. Loss of vision or decrease in vision;
- B. loss of eye;
- C. infection;
- D. bleeding inside or behind the eye;
- E. uncomfortable or painful eye;
- F. less attractive eye;
- G. unsuccessful or temporary control of glaucoma or worsening of glaucoma;
- H. cataract formation or progression;
- I. need for additional treatment and/or surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

##### §2317. Corneal Surgery: Corneal Transplant, Pterygium, or Other

- A. Loss of vision or decrease in vision;
- B. loss of eye;
- C. infection;
- D. bleeding inside or behind the eye;
- E. uncomfortable or painful eye;
- F. increased eye pressure;
- G. less attractive eye;
- H. need for additional treatment and/or surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

##### §2318. Laser Capsulotomy (creation of opening in lens membrane)

- A. Loss of vision or decrease in vision;
- B. failure to improve vision;

- C. glaucoma (increased eye pressure);
- D. retinal detachment (separation of nerve layers of eye);
- E. dislocation of lens implant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

**§2319. Eucleation or Evisceration (removal of eye or its contents)**

- A. Bleeding;
- B. infection;
- C. chronic discomfort or pain;
- D. less attractive appearance;
- E. need for additional treatment and/or surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299, 40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

**§2320. Radial Keratotomy (reshape cornea by multiple cuts)**

- A. Loss of vision or decrease in vision;
- B. loss of eye;
- C. infection;
- D. variable vision;
- E. radiating images around lights;
- F. over correction, under correction or distortion of vision;
- G. cataract formation or progression;
- H. retained need for glasses;
- I. inability to wear contact lenses;
- J. glare problems causing loss of ability to drive;
- K. need for additional treatment and/or surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

**§2321. Eye Muscle Surgery**

- A. Loss of vision or decrease in vision;
- B. loss of eye;
- C. double vision;
- D. need for additional eye muscle surgery;
- E. infection;
- F. less attractive appearance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

**§2322. Laser Treatment of Eye (glaucoma or retina problems)**

- A. Loss of vision or decrease in vision;
- B. increase in eye pressure (glaucoma);
- C. visual distortion;
- D. need for surgery inside of the eye;
- E. need for additional repeat laser treatment to correct clouding of vision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health

and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

**§2323. Retina (nerve layer of eye)/Vitreous (central gel-like substance in eye) Surgery**

- A. Loss of vision;
- B. loss of eye;
- C. infection;
- D. bleeding;
- E. uncomfortable or painful eye;
- F. double vision;
- G. cataract formation or progression;
- H. need for additional treatment and/or surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40E et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 20: (February 1994).

Rose V. Forrest  
Secretary

**RULE**

**Department of Insurance  
Commissioner of Insurance**

**Regulation 47—Actuarial Memoranda**

Under the authority of R.S. 22:162.1 and R.S. 49:950 et seq., the commissioner of insurance hereby adopts Regulation 47. The regulation establishes guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with R.S. 22:162.1 actuarial opinion reserves, and for memoranda in support thereof.

**Table of Contents**

- Section 1. Purpose
- Section 2. Authority
- Section 3. Scope
- Section 4. Definitions
- Section 5. General Requirements
- Section 6. Required Opinions
- Section 7. Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis
- Section 8. Statement of Actuarial Opinion Based on Asset Adequacy Analysis
- Section 9. Description of Actuarial Memorandum Including an Asset Adequacy Analysis
- Section 10. Additional Considerations for Analysis

Copies of the full text of this rule may be obtained from the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802, phone (504) 342-5015.

James H. "Jim" Brown  
Commissioner

## RULE

### Department of Insurance Commissioner of Insurance

#### Regulation 48—Health Insurance Standardized Claim Forms

In accordance with the provisions of R.S. 49:950 et seq., of the Administrative Procedure Act, and Act 653 of the 1993 Regular Legislative Session, the commissioner of insurance hereby adopts Regulation 48. The regulation provides for the standardization of claims forms used for billing health care services.

#### Regulation 48 Standardized Claims Forms

##### Section 1. Purpose

The purpose of this regulation is to standardize the forms used in the billing and reimbursement of health care, reduce the number of forms utilized and increase efficiency in the reimbursement of health care through standardization.

##### 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. 22:10, 22:213(A)(14), and 22:3016(C) of the Insurance Code.

##### Section 3. Definitions

*CDT-1 Codes*—the current dental terminology prescribed by the American Dental Association.

*CPT-4 Codes*—the current procedural terminology published by the American Medical Association.

*HCFA*—the federal Health Care Financing Administration of the U.S. Department of Health and Human Services.

*HCFA Form 1500*—the health insurance claim form published by HCFA for use by health care providers.

*HCFA for UB92*—the health insurance claim form published by HCFA for use by institutional care providers.

*HCPCS*—HCFA's common procedure coding system which is based upon the AMA's Physician Current Procedural Terminology, Fourth Edition (CPT-4).

1. *HCPCS Level 1 Codes*—the AMA's CPT-4 codes with the exception of anesthesiology services.

2. *HCPCS Level 2 Codes*—the codes for physician and non-physician services are not included in COT-4.

##### *Health Care Provider*—

1. an acupuncturist licensed under R.S. 37:1356-1360;
2. a certified registered nurse anesthetist licensed under R.S. 37:930;
3. a chiropractor licensed under R.S. 37:2801-2830.7;
4. a dentist licensed under R.S. 37:751-794;
5. a dietician and nutritionist licensed under R.S. 37:3081-3093 and 36:259U;
6. durable medical equipment suppliers;
7. an emergency medical technician licensed under R.S. 40:1231-1232;
8. a general health clinic (excluding early periodic screening diagnosis treatment clinics) certified by the Louisiana Department of Health and Hospitals;
9. a hearing aid dealer licensed under R.S. 37:2441-2465;
10. a licensed practical nurse licensed under R.S. 37:961;

11. a mental health counselor licensed under R.S. 37:1101-1115;
  12. a mental health clinic licensed under R.S. 28:567;
  13. a midwife licensed under R.S. 37:3240-3257;
  14. an occupational therapist licensed under R.S. 37:3001-3014;
  15. an optometrist licensed under R.S. 37:1052;
  16. a physical therapist and physical therapist assistant licensed under R.S. 37:2401-2419;
  17. a physician licensed under R.S. 37:1261-1292;
  18. a physician assistant licensed under R.S. 37:1360.21-27;
  19. a podiatrist licensed under R.S. 37:611-628;
  20. a psychologist licensed under R.S. 37:2351-2370;
  21. a registered nurse licensed under R.S. 37:911-931;
  22. a rehabilitation center licensed under 42:CFR 405.1701Q;
  23. a respiratory therapist licensed under R.S. 37:3351-3361;
  24. a social worker licensed under R.S. 37:2701-2718;
  25. a speech pathologist and audiologist licensed under R.S. 2651-2665;
  26. a substance abuse counselor licensed under R.S. 37:3371-3384;
  27. a substance abuse prevention/treatment program licensed under R.S. 40:1058.1-1058.3;
  28. a free standing ambulatory surgical center licensed under R.S. 40:2131-2141;
  29. any other health care providers as licensed by the state of Louisiana;
- ICD-9-CM Codes*—the disease codes in the international classification of diseases, ninth revision, clinical modifications published by the U.S. Department of Health and Human Services.
- Institutional Care Provider*—
1. an adult day health care provider licensed under R.S. 46:1971-1980;
  2. an ambulatory surgical center licensed under R.S. 40:2131-2143;
  3. a drug screening laboratory licensed under R.S. 49:1111-1113, 1115-1118, 1121, 1122, and 1125.
  4. an end stage renal dialysis facility under 42:CFR 405.2100;
  5. a home health agency licensed under R.S. 40:2009.31-2009.40;
  6. a hospice licensed under R.S. 40:2181-2191;
  7. a hospital licensed under R.S. 40:2100-2114;
  8. a nursing home licensed under R.S. 40:2009;
  9. a residential care/community group home or residential facility licensed under R.S. 46:51, 1401-1411, and 28:1-284;
  10. any other institutional care provider as licensed by the state of Louisiana.
- J512 Form*—the uniform dental claim form approved by the American Dental Association for use by dentists.
- Medicare*—Title XVIII of the federal Social Security Act.
- Medicaid*—Title XIX of the federal Social Security Act.

*Revenue Codes*—the codes established for use by institutional care providers by the National Uniform Billing Committee.

#### Section 4. Applicability and Scope

Except as otherwise specifically provided, the requirements of this regulation apply to all issuers of health care policies or contracts of insurance, administrators of self-funded employee benefit plans, and other forms of insurance and entitlement programs under Title XVIII and Title XIX involved in the reimbursement of health care expenses, and all providers of health care licensed by the state.

#### Section 5. Requirements for use of HCFA Form 1500

A. Health care providers, other than dentists, shall use the HCFA Form 1500 and instructions provided by HCFA for use of the HCFA Form 1500 when billing patients or their representatives for reimbursement of claims with insurers for professional services.

B. An issuer may not require a health care provider to use any coding system for the initial filing of claims for health care services other than the following:

1. HCPCS Codes; and
2. ICD-9-CM Codes.

C. An issuer may not require a health care provider to use any other descriptor with a code or to furnish additional information with the initial submission of a HCFA Form 1500 except under the following circumstances:

1. when the procedure code used describes a treatment or service which has not been included in CPT-4 or is billed under an unlisted procedure code and a description of services is necessary; or
2. when the procedure code is followed by the CPT-4 modifier 22, 47, 50, 51, 52, 62, 66, 77, or 99; or
3. when required by a contract/agreement between the issuer and health care provider; or
4. as otherwise required by federal regulation.

D. Use of HCFA Form 1500 shall be effective July 1, 1994 for all issuers excluding rehabilitation facilities reimbursed by Louisiana Medicaid which will have an effective date of January 1, 1995.

#### Section 6. Requirements for use of HCFA Approved Form UB92

A. Institutional care providers shall use the HCFA approved Form UB92 and instructions provided by HCFA for use of the HCFA approved UB92 when billing patients or their representatives directly and filing claims with issuers for professional services.

B. An issuer may not require an institutional care provider to use any coding system for the initial filing of claims for health care services other than the following:

1. ICD-9-CM Codes;
2. Revenue Codes;
3. HCPCS Level 1 Codes;
4. HCPCS Level 2 Codes; and
5. if charges include direct service of a health care provider, the information outlined in Section 5 of this regulation.

C. Use of the HCFA approved Form UB92 shall be effective July 1, 1994 for all issuers excluding nursing facilities, adult day health care facilities, and residential care

facilities reimbursed by Louisiana Medicaid which shall have an effective date of January 1, 1996.

#### Section 7. Requirements for use of J512 Form

A. A dentist shall use the J512 Form and instructions provided by the American Dental Association CDT-1 for use of the J512 Form by billing patients or their representatives directly and filing claims with issuers for professional services.

B. An issuer may not require a dentist to use any other code other than the CDT-1 codes for the initial filing of claims for dental care services.

C. Use of J512 Form shall be effective July 1, 1994 for all issuers excluding reimbursement to dentists reimbursed by Louisiana Medicaid which shall have an effective date of January 1, 1995.

#### Section 8. General Provisions

A. A health care provider or institutional care provider shall file a claim in a manner consistent with the requirements of this regulation which are:

1. a paper form printed on 8.5-inch paper;
2. an electronically transmitted claim.

B. An issuer shall accept a form which is submitted in compliance with this regulation for the processing of the insured's or beneficiaries' claims.

C. Nothing in this regulation shall prevent an issuer from requesting additional information which is not contained on the forms required under this regulation to determine eligibility of the claim for payment if required under the terms of the policy or certificate issued to the claimant.

D. All health care providers and institutional care providers shall:

1. use the most current editions of the HCFA approved Form 1500, HCFA Form UB92, or J512 Form and most current instructions for these forms in the billing of patients or their representatives and filing claims with issuers;
2. modify their billing practices to encompass the coding charges for all billing and claim filing by the effective date of the changes set forth by the developers of the forms, codes and procedures required under this regulation.

E. Submitted billing and claim filing forms not complying with the minimum requirements of this regulation shall be considered to be in noncompliance with the regulation and issuers shall have the right to deny reimbursement until such time as the forms are in compliance with this regulation.

James H. "Jim" Brown  
Commissioner

#### RULE

Department of Insurance  
Commissioner of Insurance

Regulation 50—Miscellaneous Accreditation Standards

Under the authority of R.S. 22:2(H), R.S. 22:3 and R.S. 22:2084, the Department of Insurance gives notice that the following regulation becomes effective February 20, 1994.

This action complies with the statutory law administered by the Department of Insurance.

The text of this rule was published as an emergency rule on pages 1293-1294 of the October 1993 issue of the *Louisiana Register*.

### Regulation 50

#### Miscellaneous Accreditation Standards

##### Section 1. Authority

This regulation is promulgated under the authority of R.S. 22:2(H), R.S. 22:3, R.S. 22:2084 and the Administrative Procedure Act, R.S. 49:950 et seq.

##### Section 2. Purpose

The purpose of this regulation is to implement changes recommended by the National Association of Insurance Commissioners pursuant to a preliminary examination of the Louisiana Department of Insurance relating to the National Association of Insurance Commissioners Financial Regulation Standards and Accreditation Program.

##### Section 3. Standards of Accreditation

A. CPA Audits. Act Number 811 of the 1992 Regular Session of the Louisiana Legislature amended Section 1451(D) of Title 22 to require insurers to file the National Association of Insurance Commissioners annual statement blank and quarterly statement blank, prepared in accordance with the National Association of Insurance Commissioners annual statement instruction handbook. Any apparent conflicts which arise between provisions of the annual statement instructions and Part XXVIII-A "Audited Financial Reports Law" of the Louisiana Insurance Code, being R.S. 22:1321-1335, shall be resolved by adherence to the annual statement instructions.

##### B. Risk Retention and Purchasing Groups

1. In the event of a material change in the plan of operation of a risk retention group chartered in Louisiana, an appropriate revision of the plan must be filed with the Commissioner of Insurance within 10 days of such revision.

2. In the event of a revision of a plan of operation for a risk retention group not chartered in Louisiana, such revision must be filed with the commissioner of insurance at the same time the revision is submitted to the commissioner of the chartering state.

3. Purchasing groups which obtain insurance from an insurer not admitted in Louisiana or from a risk retention group shall inform each of the members of the group which have a risk resident or located in Louisiana that the risk is not protected by the Louisiana Insurance Guaranty Association and that the risk retention group or insurer may not be subject to all insurance laws and regulations of Louisiana.

4. Purchasing groups must notify the commissioner of insurance within 10 days of any changes in their requirements of registration.

5. No purchasing group may purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole; however, coverage may provide for a deductible or self-insured retention applicable to individual members.

James H. "Jim" Brown  
Commissioner

## RULE

### Department of Revenue and Taxation Severance Tax Division

#### Oilfield Site Restoration Fee (LAC 61:I.5301)

Under the authority of R.S. 30:87 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Severance Tax Division, has adopted the following rule pertaining to the oilfield site restoration fee.

Act 404 of the 1993 Regular Session of the Louisiana Legislature instituted the oilfield site restoration fee and required the Department of Revenue and Taxation to collect the fee. This regulation pertains to the payment of the fee and imposes reporting requirements, filing due dates, and delinquent penalties.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue and Taxation

#### Chapter 53. Miscellaneous Fees

#### §5301. Oilfield Site Restoration Fee

A. The Department of Revenue and Taxation is responsible for collection of the oilfield site restoration fee imposed on the production of gas, oil, distillate, condensate, or similar natural resources. The fee shall be assessed on the same production that is taxed by the state's severance tax laws. An annual fee, administered and collected by the Office of Conservation, is also imposed on nonproducing wells located within the state, except for temporarily abandoned or saltwater disposal wells in stripper fields.

B. Definitions. For the purposes of this Section, the following terms are defined:

*Condensate*—liquid hydrocarbons recovered by initial separation from a well classified as a gas well by the Office of Conservation or recovered from gas streams at drip points, plant inlet scrubbers, compressors, dehydrators, and metering stations.

*Gas*—gaseous phase hydrocarbons recovered by separation from either an oil well or gas well.

*Oil*—liquid hydrocarbons recovered by ordinary production methods from a well classified as an oil well by the Office of Conservation.

*Operator of Record*—the operator of record according to the Office of Conservation records.

*Secretary*—the secretary of the Department of Revenue and Taxation.

##### C. Due Dates and Delinquent Dates

1. The first fees due under R.S. 30:87(A) and (B) shall be for the period ending December 31, 1993 based on the oil, condensate, and natural gas production for the months of September, October, November, and December 1993, and shall be due on or before January 31, 1994, and shall become delinquent after such date and from such time shall be subject to the interest, penalties, and costs as provided in Chapter 18, Subtitle II of Title 47. Thereafter, the fees levied by R.S. 30:87(A) and (B) shall be due on a quarterly basis and will be

due on or before the last day of the month following the last day of the quarter period and shall become delinquent after this date and shall be subject to interest, penalties, and costs as provided in Chapter 18, Subtitle II of Title 47.

2. The secretary of the Department of Natural Resources will certify to the secretary when the Oilfield Site Restoration Fee fund equals or exceeds \$10 million. The secretary will notify, in writing, all parties who are remitting the fee to cease payment of the fee by a specific date. All fees collected up to that date will be remitted on or before the first day of the second month following the date specified.

3. The secretary of the Department of Natural Resources will certify to the secretary when the Oilfield Site Restoration Fee fund has fallen below \$6 million. The secretary will notify, in writing, all parties who are registered to collect and remit the fee to resume collection and payment of this fee starting with a specific date. The resumption date will be specified on the notice.

#### D. Reports and Payment of the Fees

1. All returns and reports shall be made on forms prescribed by the secretary and furnished by the Department of Revenue and Taxation, or on similar forms that have been approved for use by the secretary. Returns and reports shall be completed and filed in accordance with instructions issued by the secretary.

2. Any person who severs, purchases, or processes gas, oil, distillate, condensate, or similar natural resources is required to furnish information necessary for the proper enforcement and verification of the fees levied in R.S. 30:87.

3. Every operator of record of producing oil and/or gas wells must submit a return and make payments of the fees imposed by R.S. 30:87. Purchasers of oil and/or gas may make payment for the operator of record and their respective working-interest owners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:87.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Severance Tax Division, LR 20: (February 1994).

Linda Denney  
Director

## RULE

### Department of Revenue and Taxation Tax Commission

#### Ad Valorem Tax—Personal Property (LAC 61:V.Chapters 1-35)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, the Tax Commission has amended the Louisiana Tax Commission Real/Personal Property rules and regulations for use in the 1994 (1995 Orleans Parish) tax year.

The full text of this proposed rule may be obtained from the

Office of the State Register, 1051 North Third Street, Suite 512, Baton Rouge, LA 70802, phone (504)342-5015.

Malcolm B. Price, Jr.  
Chairman

## RULE

### Department of Social Services Office of Community Services

#### Central Registry—Child Abuse/Neglect Cases (LAC 67:V.1103)

The Department of Social Services, Office of Community Services, amends the rule entitled "Central Registry—Child Abuse/Neglect Cases" published in the *Louisiana Register*, Vol. 18, No. 1, January 20, 1992, page 79. This rule is mandated by revisions to the Louisiana Children's Code, Title VI, Child in Need of Care, Chapter 5, Articles 615 and 616 by the 1993 Louisiana Legislature.

#### Title 67

#### SOCIAL SERVICES

#### Part V. Office of Community Services Subpart 3. Child Protective Services

#### Chapter 11. Administration and Authority §1103. State Central Registry

A. ...

1. The Louisiana Children's Code, Article 616, requires the maintenance of a central registry of all reported cases. As part of the investigation, the Office of Community Services Child Protection Investigation worker shall provide to parents written notice of the registry and the rules governing maintenance and expungement of registry records.

a. The Office of Community Services will not maintain records of reports of child abuse or neglect on families or out-of-home caretakers determined to be inherently improbable or false as provided in Article 615 (B)(5) and (6).

b. Records of reports of suspected child abuse or neglect found to be valid in families will be maintained until the youngest child in the victim's family reaches the age of eighteen. Records of reports of child fatalities medically determined to have been caused by child abuse or neglect will be maintained indefinitely. Records on valid findings on caretakers in restrictive care facilities and day care centers will be maintained for five years, unless there is another valid finding involving the same perpetrator. In those cases the records will be maintained until there has been no subsequent valid finding for five years. Records on valid findings on foster families, when the child victim is a foster child, will be maintained indefinitely.

c. Any person whose name is included on the central registry may petition the court in the parish in which the investigation was conducted to request an expungement order. The Office of Community Services will expunge the petitioner's name upon receipt of a court order.

\* \* \*



**AUTHORITY NOTE:** Promulgated in accordance with the Louisiana Children's Code, Title VI, Child in Need of Care, Chapter 5, Articles 615 and 616, and Title XII, Adoption of Children, Chapter 2, Article 1173, and R.S. 14:403 (H).

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), amended LR 20: (February 1994).

Gloria Bryant-Banks  
Secretary

**RULE**

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

**JOBS Program Implementation (LAC 67:III.2902)**

The Department of Social Services, Office of Family Support, has amended LAC 67:III.2902, Job Opportunities and Basic Skills Training Program implementation.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 5. Job Opportunities and Basic Skills Training Program**

**Chapter 29. Organization**

**Subchapter A. Designation and Authority of State Agency**

**§2902. Implementation**

The JOBS Program is available as either a complete or minimal program in every parish.

1. A complete program offers the full range of component activities. Complete program operations are provided in all *Metropolitan Statistical Areas* and to at least 75 percent of the state's adult AFDC recipients in accordance with 45 CFR 250.11.

2. A minimal program includes at least these component activities: high school or equivalent education, either on the job training or job search, and a Community Work Experience Program. It also offers information and referral to state employment services.

3. The type of program administered in each parish is subject to change, depending on the reclassification of *Metropolitan Statistical Areas* or shifts in the AFDC population.

4. Minimal programs are currently administered in the following parishes: Avoyelles, Caldwell, St. Mary, St. Helena, West Feliciana, Evangeline, Vermilion, Catahoula, LaSalle, Sabine, Winn, Bienville, Claiborne, Desoto, Red River, East Carroll, Jackson, Madison, Morehouse, Richland, Tensas, Union, West Carroll, Washington, Assumption, Iberville, Allen, Beauregard, Cameron, and Jefferson Davis.

**AUTHORITY NOTE:** Promulgated in accordance with F.R. 54:42146 et seq., 45 CFR 250.0 and R.S. 46:451 et seq.

**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 17:1227 (December 1991), LR 18:967

(September 1992), LR 19:504 (April 1993), LR 19:1297 (October 1993), LR 20:24 (January 1994), LR 20: (February 1994).

Gloria Bryant-Banks  
Secretary

**RULE**

**Department of State  
Office of Uniform Commercial Code**

**Central Registry Master List Program (LAC 10:XIX.321)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 49:230(C)(2) relative to the authority of the Department of State, Office of the Uniform Commercial Code to promulgate rules and regulations, the Department of State amends its existing rule relative to the fee structure for the Central Registry Master List Program.

*(Editor's Note: LAC Title 10 has been recodified with new Part numbers; Chapter numbers within each Part remain the same.)*

**Title 10**

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,  
INVESTMENT SECURITIES AND UCC**

**Part XIX. Uniform Commercial Code**

**Chapter 3. Central Registry**

**§321. Schedules of Fees for Filing and Encumbrance Certificates**

A. - B...

C. Registration (Initial and Renewal) for the Master List of Farm Product Encumbrances shall be assessed each calendar year and are calculated as follows:

**Farm Product**

| Category | Price Per Product | Parish(es)      |
|----------|-------------------|-----------------|
| I        | \$20              | *\$5 per parish |
| II       | \$15              | selected        |
| III      | \$10              |                 |
| IV       | \$ 5              |                 |

\*Count each parish only once, even if a parish is chosen for more than one product.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3655 and Public Law 99-198 (Food Security Act of 1985).

**HISTORICAL NOTE:** Promulgated by the Department of State, Office of Uniform Commercial Code, LR 17:496 (May 1991), amended LR 20: (February 1994).

Fox McKeithen  
Secretary of State

# NOTICES OF INTENT

## NOTICE OF INTENT

Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Advisory Commission on Pesticides

Reporting Pesticide Poisoning and Emergencies;  
Training; Aerial Applicator Certification  
(LAC 7:XXIII.13123-13211)

The Department of Agriculture and Forestry, Advisory Commission on Pesticides, advertises its intent to amend LAC 7:XXIII.Chapter 131. These rule amendments will provide for: (1) certification of commercial aerial applicators (2) training of agricultural and environmental specialists, (3) reporting of pesticide emergencies and (4) notification of pesticide poisoning.

These rules comply with and are authorized by R.S. 3:3203, 3:3208, R.S. 3:3242 and R.S. 3:3249. No preamble regarding these proposed rules is available.

### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXIII. Louisiana Advisory Commission on Pesticides

#### Chapter 131. Louisiana Advisory Commission on Pesticides

#### Subchapter F. Certification

#### §13123. Certification of Commercial Applicators

A. The commissioner hereby establishes the following standards as qualifications required for certification:

1. - 3. ...

4. Commercial aerial pesticide applicators, with the single exception of aerial mosquito pest control applicators, who have been found to have violated a provision of the Louisiana Pesticide Law or any of the rules or regulations adopted pursuant to that law by the Advisory Commission on Pesticides or the commissioner, or who have received a "warning letter" from the department during the past calendar year, shall attend a department-approved off-target training course prior to making any application in the following year, in order to maintain their certification as a commercial aerial applicator.

5. Commercial aerial pesticide applicators who are certifying for the first time or who have not been certified within the past three years, with the single exception of aerial mosquito pest control applicators, must attend a department-approved off-target training course prior to making any application.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), LR 19:736 (June 1993), LR 20:

#### Subchapter Z. Emergency Procedures Related to Pesticides

#### §13185. Response to Emergency

\* \* \*

C. Reporting Requirements. If it is reasonably believed that a pesticide emergency has taken place, all appropriate requirements for reporting to the Louisiana Department of Agriculture and Forestry shall be complied with, according to LAC 7:XXIII.13181.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:3203(A).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:247 (March 1992), LR 20:

#### §13188. Department Training

The department shall train its agricultural and environmental specialists in procedures relating to emergencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203(A).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 20:

#### Subchapter BC. Health Complaints

#### §13211. Notification of Pesticide Poisoning

Each physician who treats a health complaint that is diagnosed as caused by pesticide poisoning shall provide notice of the poisoning to the director of the Division of Pesticide and Environmental Programs via the 24-hour telephone hotline, (504) 925-3768, within 24 hours of the diagnosis and in writing posted within three days of the diagnosis. Each report shall contain the following:

1. the name, address, and telephone number of the treating physician;
2. the name, address, and telephone number of each patient treated;
3. date of treatment; and
4. the location of the facility where the reporting physician provided treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and 3:3208.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Programs, LR 20:

Interested persons may submit opinions, suggestions or data through March 25, 1994, to Bobby Simoneaux, Office of Agricultural and Environmental Sciences, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. A public hearing will be held on Monday, March 28, 1994, at 9:30 a.m. at the address listed above. All interested persons may make submissions at that time.

Bob Odom  
Commissioner

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

**RULE TITLE: Reporting of Pesticide Poisoning and  
Emergencies; Training; Aerial Applicator Certification**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings to state or local governmental units are anticipated to result from implementation of the proposed rule changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue to state or local governmental units is anticipated to result from implementation of the proposed rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
The rule regarding aerial applicator certification will require some of those applicators take an off-target training course at a cost of \$15. No costs or economic benefits are anticipated to result to directly affected persons as a result of the implementation of the remaining proposed rule adoptions or amendments.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment is anticipated.

Richard Allen  
Assistant Commissioner

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Seed Commission**

**Seed Certification Standards (LAC 7:XIII.Chapter 87)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 and R.S. 3:1433, notice is hereby given that the Louisiana Department of Agriculture and Forestry intends to amend LAC 7:XIII.Chapter 87.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XIII. Seeds**

**Chapter 87. Rules and Regulations Pursuant to the  
Louisiana Seed Law**

**§8723. Definitions**

\* \* \*

*Inbred Line*—a relatively true-breeding strain resulting from at least five successive generations of controlled self-fertilization or of backcrossing to a recurrent parent with selection, or its equivalent for specific characteristics.

*Open-pollination*—pollination that occurs naturally as opposed to controlled pollination such as by detasselling cytoplasmic male sterility, self-incompatibility or similar processes.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S.

3:1431 and R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:564 (November 1982), repealed and repromulgated LR 12:825 (December 1986), amended LR 20:

**§8725. General Requirements for Certification**

A. The crop or variety to be certified must have been approved for certification by the Seed Commission and the LSU Agriculture Experiment Station. Also, the originator, developer, owner or agent shall provide the following to the Department of Agriculture and Forestry:

- 1. the name of the variety;
- 2. a statement concerning the variety's origin and the breeding procedure used in its development;
- 3. a detailed description of the morphological, physiological and other characteristics of the plants and seed that distinguish it from other varieties;
- 4. evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety;
- 5. a statement delineating the geographic area or areas of adaptation of the variety;
- 6. a statement on the plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied;
- 7. a description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified;
- 8. any additional restrictions on the variety specified by the breeder, with respect to geographic area of seed production, age of stand or other factors affecting genetic purity;
- 9. a sample of seed representative of the variety as marketed.

B. - L. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:197 (April 1983), repealed and repromulgated LR 12:825 (December 1986), amended LR 20:

**§8737. Listing of Certified Seed Conditioning Plants**

A. - B. ...

C. The following requirements must be met by processors of all classes of certified seed.

- 1. Facilities shall be available to perform processing without introducing admixtures.
- 2. Identity of the seed must be maintained at all times.
- 3. Records of all operations relating to certification shall be completed and adequate to account for all incoming seed and final disposition of seed.
- 4. Processors shall permit inspection by the certifying agency of all records pertaining to all classes of certified seed.
- 5. Processors shall designate an individual who shall be responsible to the certifying agency for performing such duties as may be required by the certifying agency.
- 6. Seed lots of the same variety and class may be blended and the class retained. If lots of different classes are blended, the lowest class shall be applied to the resultant blend. Such blending can only be done when authorized by the certifying agency.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:565 (November 1982), amended LR 9:197 (April 1983), repealed and repromulgated LR 12:825 (December 1986), amended LR 20:

**§8739. Tagging**

A. - F. ...

G. The official certification label may be printed directly on the container with prior approval of the Department of Agriculture and Forestry.

H. Labels other than those printed on the containers shall be attached to containers in a manner that prevents removal and reattachment without tampering being obvious.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433 and R.S. 3:1434.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:196 (April 1983), repealed and repromulgated LR 12:825 (December 1986), amended LR 20:

**§8771. Hybrid Seed Corn Certification Standards**

A. Eligibility Requirements. Hybrid corn may be one of the following:

1. Single Cross. The first generation hybrid between two inbred lines.
2. Double Cross. The first generation hybrid between two single crosses.
3. Three-way Cross. A first generation hybrid between a single cross and an inbred line.
4. Top Cross. The first generation hybrid of a cross between an inbred line and an open-pollinated variety or the first generation hybrid between a single cross and an open-pollinated variety.
5. Foundation Single Cross. A single cross used in the production of a double cross, a three-way, or a top cross.

B. - D. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:572 (November 1982), amended LR 9:197 (April 1983), repealed and repromulgated LR 12:825 (December 1986, amended LR 13:156 (March 1987), LR 13:232 (April 1987), LR 20:

**§8785. Seed Irish Potato Certification Standards**

A. ...

B. Field Standards

| Factor  | Foundation | Registered | Certified |
|---|------------|------------|-----------|
| Land requirement  | 1 yr.      | 1 yr.      | 1 yr.     |
| Isolation   | 10 ft.     | 10 ft.     | 10 ft.    |
| Other varieties & Off-type plants   | None       | None       | 0.1%      |
| Diseases*   | 0.2%       | 0.2%       | 0.2%      |
| Mild Mosaic   | 0.5%       | 0.5%       | 5.0%      |
| Sclerotium Rolfsii wilt   | 0.5%       | 0.5%       | 1.0%      |
| Potato Wart, Ring rot, Late Blight  | 1.0%       | 1.0%       | 1.0%      |
| Total Diseases  | 0.3%       | 0.3%       | 0.3%      |
| Harmful Insects:<br>Tuber moth  | None       | None       | None      |
| *Rugose mosaic, leafroll, spindle tuber, yellow dwarf, witches' broom, haywire, giant hill, rosette, spinach leaf, curly dwarf. |            |            |           |

C. Tuber Standards

| Factor  | Foundation | Registered | Certified |
|---|------------|------------|-----------|
| Stem End Discoloration  | 2.5%       | 2.5%       | 2.5%      |
| Hair Sprout   | 0.5%       | 0.5%       | 5.0%      |
| Spindle Tuber   | 0.2%       | 0.2%       | 0.2%      |
| Scab and Rhizoctonia*   | 6.0%       | 6.0%       | 6.0%      |
| Net Necrosis  | 0.5%       | 0.5%       | 5.0%      |
| Late Blight, Golden & Potato Rot, Potato Wart & Ring Rot  | 1.0%       | 1.0%       | 1.0%      |
| Tuber Moth  | None       | None       | None      |
| Sclerotium Rolfsii Wilt   | 0.5%       | 0.5%       | 1.0%      |
| Nematodes (Root-Knot)**   | 1.0%       | 1.0%       | 1.0%      |
| *1 percent of tubers by weight have more than five percent of the surface covered by scab or rhizoctonia. |            |            |           |
| **1 percent of tubers by weight showing nematode (root-knot) infection.                                   |            |            |           |

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:577 (November 1982), repealed and repromulgated LR 12:825 (December 1986), amended LR 20:

**§8787. Seed Irish Potato Certification Standards (Out-of-State)**

Conditions governing shipment or movement of seed Irish potatoes into Louisiana shall conform to the following:

1. Seed Irish potatoes must have passed field and storage seed certification requirements of the proper certifying agency. The tolerances for insects and diseases shall be the same as those set forth in the certified seed regulation for seed Irish potatoes (LAC 7:XIII.8787).

2. Each container of seed moved into, offered for sale, or sold in Louisiana shall have attached thereto an official foundation, registered, or certified seed tag issued by the proper certifying agency in the state of origin.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:1433.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Seed Commission, LR 8:578 (November 1982), LR 12:825, amended LR 9:201 (April 1983), repealed and repromulgated LR 12:825 (December 1986), amended LR 14:606 (September 1988), LR 15:78 (February 1989).

Interested parties may submit comments to Benjy Rayburn, Assistant Director, Seed Programs, Department of Agriculture and Forestry, Box 1108, Baton Rouge, LA 70821-1108 through Friday, May 20, 1994.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Seed Certification Standards**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
No costs or savings to state or local governmental units are anticipated to result from the implementation of the proposed rules.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
No effect on revenue collections of state or local governmental units is anticipated to result from the implementation of the proposed rules.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**  
The proposed rule amendments will have no economic impact except in the case of seed Irish potato dealers. Seed Irish potato dealers should benefit from an increased supply of seed potatoes at lower wholesale prices. An estimate of savings is not ascertainable at this time.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**  
Seed Irish potato dealers in Louisiana will be more

competitive with those of other southern states.

Richard Allen  
Assistant Commissioner

John Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Office of Animal Health Services**

**Pet Turtles (LAC 7:XXI.Chapter 123)**

The Department of Agriculture and Forestry advertises its intent to amend LAC 7:XXI.Chapter 123. These rules will revise the procedures and requirements for the operation and licensing of pet-turtle farmers in Louisiana.

These rules comply with R.S. 3:2358.1 et seq. No preamble regarding these rules is available.

**Title 7**

**AGRICULTURE AND ANIMALS  
Part XXI. Diseases of Animals**

**Chapter 123. Pet Turtles**

**§12301. Definitions**

In addition to the definitions listed below, the definitions in R.S. 3:2358.3 shall apply to these regulations.

*Act*—Act 770 of the 1990 Regular Session, codified as Part X of Chapter 16 of Title 3 of the Louisiana Revised Statutes of 1950.

*Agent*—an authorized representative of the State Department of Agriculture and Forestry.

*Department*—the Louisiana Department of Agriculture and Forestry.

*Laboratory*—a certified laboratory as defined in R.S. 3:2358.3 and which employs at least one microbiologist.

*Licensed Pet-Turtle Farmer*—an individual, partnership, corporation or entity engaged in the breeding, hatching, propagating, raising, growing, receiving, shipping, transporting, exporting or selling of pet turtles or turtle eggs and who has been issued a license from the Louisiana Department of Agriculture and Forestry.

*Pet Turtles*—turtles with a carapace length of less than 4 inches.

*Pet-Turtle Farmer*—an individual, partnership, corporation or entity engaged in the breeding, hatching, propagating, raising, growing, receiving, shipping, transporting, exporting or selling of pet turtles or turtle eggs.

*Turtle Eggs*—the shelled ova of turtles.

*Turtle Lot or Turtle Group*—any amount of pet turtles or turtle eggs up to 20,000 in number.

*Turtles*—any animals commonly known as turtles, tortoises, terrapins and all other animals of the order *Testudinata*, class *Reptilia* except marine species (Families *Dermochelidae* and *Cheloniidae*).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR

17:350 (April 1991), amended LR 20:

**§12302. Monitoring of Turtle Farms for Safety and Sanitization**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.9.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Forestry, Office of Animal Health Services, LR 17:350 (April 1991), repealed LR 20:

**§12303. Monitoring of Turtle Farms for Safety and Sanitization**

A. State-employed veterinarians shall inspect the premises of pet-turtle farmers, including those areas involved in the washing, incubation and hatching of turtles, or other operations. At least one inspection shall be performed prior to the start of each turtle egg laying season. Recommendations may be made to farmers to ensure compliance with these regulations. At the time of inspection, state-employed veterinarians or their designees may randomly select turtle eggs or turtles for submission to a laboratory for microbiological examination. Inspections shall be made to ensure compliance with mandatory requirements in matters that include the following:

1. the method of turtle egg sanitization utilized;
2. the cleanliness and operation of equipment used;
3. the finish and sanitization of all things which come into contact, directly or indirectly, with pet turtles or turtle eggs, for characteristics which are beneficial to sanitization;
4. operations and building design provide for containment of all solutions used in sanitization.

B. State-employed veterinarians shall inspect the premises of turtle farmers to ensure that no turtles which have been treated by any sanitization method utilizing antibiotics shall be introduced into the environment.

C. State-employed veterinarians shall inspect the premises of turtle farmers to ensure that no turtles or turtle eggs which have been treated by any method utilizing antibiotics are used to stock or restock the ponds of a licensed pet-turtle farmer or unlicensed pet-turtle farmers.

D. State-employed veterinarians shall inspect the premises of turtle farmers to ensure that no turtles or turtle eggs belonging to groups that have been issued health certificates are commingled with turtles or turtle eggs belonging to groups that have not been issued health certificates.

E. State-employed veterinarians or their designees shall inspect the premises of turtle farmers to ensure that each turtle group is clearly identified and is not improperly commingled with saleable or hatchable turtle eggs of other groups.

F. State-employed veterinarians or their designees shall inspect the records of pet-turtle farmers to verify that all documentation required by the department are present and current.

G. Samples of water from ponds may be taken by state-employed veterinarians or their designees and transmitted to a laboratory for chemical and microbiological analysis, including but not limited to pH, antibiotic and pesticide contaminants, and potentially pathogenic bacteria.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.9.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended LR 20:

**§12304. Movement of Pet Turtle Eggs and Pet Turtles**  
Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.10.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), repealed LR 20:

**§12305. Mandatory Requirements**

Pet-turtle farmers shall:

1. employ a method of turtle egg collection and sanitization based upon generally accepted scientific principles and reasonably calculated to eliminate in pet turtles and turtle eggs diseases which are harmful to humans or other pet turtles;

2. maintain cleanliness, particularly as to those things which come into direct or indirect contact with pet turtles or turtle eggs, and operate the turtle farm in a manner consistent with the elimination in pet turtles and turtle eggs of diseases which are harmful to same or humans;

3. maintain containment of all solutions used in sanitization and to otherwise provide for appropriate disposal;

4. prevent the introduction into the environment of any turtles and turtle eggs that have been sanitized;

5. prevent the use of turtles or turtle eggs that have been sanitized for purposes of stocking or restocking any turtle pond;

6. prevent any pet turtles or turtle eggs from turtle groups with health certificates from being commingled with any pet turtles or turtle eggs from turtle groups without health certificates;

7. prevent the commingling of pet turtles or turtle eggs belonging to different turtle groups;

8. identify each turtle group clearly, expressly and in a manner sufficient to identify said turtle group and to distinguish same from other turtle groups;

9. maintain, in a legible form and in a manner that facilitates inspection, all records required by R.S. 3:2358.7 and LAC 7:XXI.12321;

10. permit and facilitate inspection by state-employed veterinarians or their designees; and

11. licensed pet-turtle farmers shall inform the department in a timely manner of their intention to ship turtle hatchlings or turtle eggs to arrange certification procedures.

12. any other mandatory requirements required under the act or this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 3:2358.7 3:2358.9, and 3:2358.10.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended LR 20:

**§12306. Microbiological Test Procedures**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2, 3:2358.11 and 3:2358.12.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), repealed LR 20:

**§12307. Sanitization**

A. The commissioner declares that the accepted method of sanitization shall be any method or methods based upon generally accepted scientific principles and reasonably calculated to achieve the stated legislative purpose of eliminating in pet turtles or turtle eggs diseases which are harmful to humans and other pet turtles.

B. Any licensed pet-turtle farmer may, in advance of use, submit a proposed method of sanitization to the department for a determination as to whether or not the proposed method is based upon generally accepted scientific principles and reasonably calculated to achieve the stated legislative purpose of eliminating in pet turtles or turtle eggs diseases which are harmful to humans and other pet turtles.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.8.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), amended LR 20:

**§12308. Quarantine**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2, 3:2358.11 and 3:2358.12.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), repealed LR 20:

**§12309. Collection of Samples of Turtle Eggs and Turtles**

In order to ensure a representative sample from the turtle group and to prevent cross-contamination, the following procedures shall be followed.

1. Licensed pet-turtle farmers shall inform the department in a timely manner of their intention to ship turtle hatchlings or turtle eggs to arrange certification procedures.

2. Upon notification by the farmer, a state-employed veterinarian or designee shall inspect the group of turtles or turtle eggs bound for shipment and randomly select turtles or eggs for submission to a certified laboratory for microbiological examination.

3. The state-employed veterinarian shall inspect the premises and turtle group or turtle eggs and shall issue a certificate of inspection subject to compliance with the act and these regulations.

4. All specimens shall be collected in a manner directed by a state-employed veterinarian or his designee.

5. The transportation to department approved laboratories for microbiological examination and handling of the samples of turtles and turtle eggs shall be performed in such a manner as to maintain identity and chain of custody; and

6. Licensed pet-turtle farmers shall have the option of:  
a. collecting samples under the on-site supervision of the state-employed veterinarian or designee; or  
b. allowing the state-employed veterinarian or designee to collect the samples.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2, 3:2358.9, 3:2358.10 and 3:2358.12.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), amended LR 20:

**§12310. Pet-Turtle Farmers; Licensing**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.5.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), repealed LR 20:

**§12311. Movement of Pet Turtle Eggs and Pet Turtles**

A. Any and all transportation or movement shall be accomplished as follows:

1. pet turtles or turtle eggs being transported or moved to a certified laboratory shall be accompanied by a certificate of inspection;

2. pet turtles for export into international commerce shall be accompanied by a health certificate and other records required by law and regulation; and

3. dead pet turtles or nonviable turtle eggs shall not be transported or moved.

B. Pet turtles or turtle eggs shall be transported or moved only in packaging that is humane and designed in accordance with generally accepted scientific principles and reasonably calculated to prevent the spread of contagious and infectious diseases of pet turtles. Any licensed pet-turtle farmer may, in advance of use, submit a proposed form of packaging for a determination as to whether the proposed packaging is humane and is designed in accordance with generally accepted scientific principles and reasonably calculated to prevent the spread of contagious and infectious diseases of pet turtles.

C. Turtles or turtle eggs intended for international commerce shall be conspicuously marked "For Export Only" on the outside of the shipping package and shall be accompanied by a health certificate and a certified laboratory report; and

D. Official health certificates and appropriate affidavits shall accompany movement of all pet turtles and turtle eggs shipped, transported or moved for noncommercial purposes.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.10.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended LR 20:

**§12312. Authority of Agents to Enter Premises**

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.5.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), repealed LR 20:

**§12313. Identification of Groups of Turtles and Turtle Eggs**

A. All groups of turtles or turtle eggs produced by licensed pet-turtle farmers in Louisiana shall be assigned an identification number consisting of six major parts:

*Amount*—the total number of turtles assigned to the turtle group, not to exceed 20,000.

*Example:* Farmer bearing code FTF submits its first group of turtles to a certified laboratory on April 4, 1991, consisting of 18,000 turtles. This group would be identified as follows:

| Farmer | Month | Date | Year | Group No. | Amount |
|--------|-------|------|------|-----------|--------|
| FTF    | 4     | 04   | 91   | 001       | 18,000 |

The turtle group number would be written:

FTF 4-04-91-001-18,000

**Date of Month**—the particular date of the month in which the pet turtles or turtle eggs are submitted to a certified laboratory for microbiological testing.

**Group Number**—for each calendar year, the first group of pet turtles or turtle eggs submitted to a certified laboratory for microbiological testing shall bear the number 001, the second, 002, and each subsequent group shall be numbered sequentially.

**Licensed Pet Farmer Identification Code**—designated by the department.

**Month**—the month, in numerical form, in which the pet turtles or turtle eggs are submitted to a certified laboratory for microbiological testing.

**Year**—the year in which the pet turtles or turtle eggs are submitted to a certified laboratory for microbiological testing.

B. No turtle group shall exceed 20,000 viable hatchlings or turtle eggs.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.7.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended LR 20:

#### §12314. Penalties

Repealed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), repealed LR 20:

#### §12315. Microbiological Test Procedures

A. Samples of turtles or turtle eggs shall be subjected to microbiological examination using approved procedures set forth in *Official Methods of Analysis of the Association of Official Analytical Chemists*.

B. Turtle groups identified as contaminated with bacteria of the genus *Salmonella* or *Arizona* or any other microorganisms pathogenic to humans, domestic animals or aquatic species shall be subject to the quarantine provisions of R.S. 3:2358.11 and these regulations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2, 3:2358.11 and 3:2358.12.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended LR 20:

#### §12317. Issuance of Health Certificates

A. Only Louisiana-licensed, federally-accredited and department-approved veterinarians will issue health certificates.

B. Health certificates shall not be issued on turtles until they have been inspected by a department-approved veterinarian and shall state that the veterinarian has found them to be free of visible signs of infectious, contagious or communicable diseases, and a certified laboratory has found them to be free of bacteria pathogenic to humans, domestic animals and aquatic species.

C. Health certificates shall be issued only on turtles or turtle eggs produced by licensed pet-turtle farmers.

**AUTHORITY NOTE:** Promulgated in accordance with R.S.

3:2358.2, 3:2358.9 and 3:2358.10.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20: §12319. **Quarantine**

In addition to the procedures set forth in R.S. 3:2358.11, upon the identification by laboratory examination of *Salmonella* or any other species of bacteria harmful to humans or other pet turtles in a group of turtles or turtle eggs, the following procedures for quarantine shall apply.

1. Notification of the test results and quarantine shall be made in person or by telephone, followed by written notification as set forth in R.S. 3:2358.11, by agents of the department, including at least one department veterinarian.

2. The quarantine and its related restrictions shall remain in effect until the farmer is otherwise given a written notification of the termination of quarantine by the department.

3. Immediately upon receipt of the personal notification of quarantine, the pet-turtle farmer producing the quarantined turtle eggs shall identify to the agents of the department all turtles or turtle eggs belonging to the same group as the one which tested positive for the presence of *Salmonella* or other harmful bacteria.

4. Pet-turtle farmers wishing to submit a quarantined turtle group for a second laboratory microbiological examination must do so prior to the end of the 21-day period specified in R.S. 3:2358.12, and must follow the same procedure established for an initial collection and submission of samples. Failure to timely obtain a second examination shall result in the implementation of the disposal procedures set forth in R.S. 3:2358.12.

5. Quarantined turtle eggs or turtles shall be subject to inventory and verification by agents of the department. Records, physical examination and photographs may be used to verify the inventory of quarantined turtle eggs or turtles.

6. Quarantined turtles and turtle eggs shall be sealed under supervision of agents of the department to prevent the spread of pathogenic bacteria until the pet-turtle farmer receives written notice of either:

a. the lifting of the quarantine; or

b. instructions dealing with the disposal of the contaminated turtle or turtle egg group.

7. All turtles and/or turtle eggs belonging to a group which has either received a second notice of contamination with harmful bacteria or otherwise ordered disposed of by the department shall be disposed of in a humane manner within 21 days of the receipt of the second notice.

8. Areas where quarantined turtles or turtle eggs have been kept, as determined by the department, shall be disinfected.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2, 3:2358.11 and 3:2358.12.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20:

#### §12321. Form and Content of Records

In addition to those records required under R.S. 3:2358.7, licensed pet-turtle farmers, exporters of pet turtles or turtle eggs, certified laboratories and department-approved veterinarians shall be responsible for maintaining for no less three years and submitting for inspection as requested all records relating to pet turtles and turtle eggs. Records shall



include, but not be limited to, purchase and disposal of antibiotics, application of any sanitization method utilized, volume of turtle eggs treated, laboratory reports and disposition of groups of turtles and turtle eggs. These records must be current.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.7.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20: §12323. **Pet-Turtle Farmers; Licensing**

A. In addition to the provisions below, the requirements for licensure set forth in R.S. 2358.5 shall apply.

B. A pet-turtle farmer license shall be issued only by the Office of Animal Health Services of the department.

C. Upon issuance of an initial license by the department, licensed pet-turtle farmers shall be assigned a permanent licensed pet farmer identification code for use on all records related to pet-turtle farming.

D. Prior to the issuance or renewal of a pet-turtle farmer license, an inspection of the farm premises shall be made by an accredited, Louisiana-licensed and department-approved veterinarian to ensure that all equipment required for sanitization and other procedures is present and in working order.

E. An applicant for a pet-turtle farmer license shall include in his application a map or schematic showing the locations of ponds or other breeding habitats, storage, treatment and incubation buildings and facilities or shall, upon inspection, allow a state-employed veterinarian to prepare such a map or schematic. Each pond or breeding habitat shall be designated by a letter, beginning with A, and shall be designated in sequential order and properly labeled on the map or schematic.

F. Pet-turtle farmer licenses shall be issued upon the satisfactory completion and acceptance by the department of the application form to be a licensed pet-turtle farmer, accompanied by an application fee of \$250 by the person seeking such a license. The application form should specify the following, along with any other information required by the commissioner of agriculture and forestry:

1. name of applicant;
2. date of application;
3. address of applicant;
4. telephone number of applicant;
5. whether the applicant is an individual, corporation, Subchapter S corporation, cooperative or partnership;
6. principal officers of the applicant, if any;
7. location of applicant's principal office and farming premises;
8. location of all offices operated by applicant, along with the name of the manager and phone number of each;
9. the dates upon which the applicant begins and ends its fiscal year;
10. the names, businesses and phone numbers of three persons who can provide references as to the character and business standing of the applicant; and
11. the following phrase shall be included at the bottom application, which must be read by the applicant and which must be signed and dated by the applicant to signify his assent thereto:

The undersigned having read Part X of Chapter 16 of Title 3 of the Louisiana Revised Statutes of 1950, Act 770 of 1990, and the rules and regulations written in conformity therewith, and agreeing to abide by and comply therewith, applies for a license to operate as a licensed pet-turtle farmer under the provisions of the aforementioned act of the Legislature, in furtherance whereof the statements and answers of the above questions are made and declared to be true under penalty of perjury.

G. Pet-turtle farmer licenses are not transferable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.5.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20: §12325. **Proper Disposal**

A. Pet-turtle farmers shall comply with the following disposal procedures.

1. Pet turtles or turtle eggs that have been found to contain Salmonella, Arizona or other harmful bacteria shall be disposed of in a humane manner.

2. Chlorine or antibiotic solutions shall be disposed of in a manner that will prevent the spread of diseases harmful to humans or turtles.

B. Dead or deformed turtles and also those turtles not sold within 12 months of certification shall be disposed of in a humane manner.

C. Any licensed pet-turtle farmer may, in advance of use, submit a proposed method of disposal to the department for a determination as to whether or not the proposed method is in compliance with this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20: §12327. **Authority of Agents to Enter Premises**

A. Agents of the department are authorized and shall be allowed entry onto any property and into any premises in the state of Louisiana where activities described in R.S. 3:2358.4(A) is occurring or has occurred for the purpose of carrying out the provisions of these regulations. Whenever reasonably possible, agents shall notify the turtle farmer before performing any inspections.

B. Agents of the department are authorized to inspect all records and premises maintained by pet-turtle farmers in order to enforce the provisions of R.S. 3:2358.1 et seq. and these regulations.

C. No person shall in any way interfere with an agent in making inspections on properties or premises in carrying out the provisions of these regulations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2 and 3:2358.5.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20: §12329. **Department Approved Veterinarians**

Prior to issuing any health or inspection certificates, veterinarians may apply to the department for approval under these regulations. All applicants shall be notified in writing as to whether or not they are approved and may appeal failure to be approved.

**AUTHORITY NOTE:** Promulgated in accordance with R.S.

3:2358.2.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20: §12331. **Validity of Rules**

If any part of these regulations are declared to be invalid for any reason by any court of competent jurisdiction, said declaration shall not affect the validity of any other part not so declared.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:2358.2.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 20:

All interested persons may submit data, views or arguments to Dr. C.T. Raby, Box 631, Baton Rouge, LA 70821-0631, through April 1, 1994.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pet Turtles**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
No costs or savings to state or local governmental units are anticipated to result from implementation of the proposed rule changes.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
No effect on revenue to state or local governmental units is anticipated to result from implementation of the proposed rule changes.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**  
No impact on receipts or income to persons affected by the proposed rule changes is anticipated.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**  
No effect on competition or employment is anticipated, other than that accomplished through improved enforcement.

Richard Allen  
Assistant Commissioner

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Structural Pest Control Commission**

**Meetings; List of Approved Termiticides  
(LAC 7:XXV.Chapter 141)**

The Department of Agriculture and Forestry, Structural Pest Control Commission advertises its intent to amend LAC 7:XXV.Chapter 141. These amendments will give the commission greater flexibility in scheduling its meetings and also promulgate the list of approved termiticides in regulation

form.

These rules comply with and are authorized by R.S. 3:3363, 3:3364 and 3:3366. No preamble regarding these proposed rules has been prepared.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXV. Structural Pest Control**

**Chapter 141. Structural Pest Control Commission**

**§14103. Administration of the Affairs of the Commission**

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F. The commission shall hold regular meetings at least once during each quarter.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3304, R.S. 3:3303 and R.S. 3:3306 (redesignated R.S. 3:3363, 3:3364 and 3:3366).

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Structural Control Commission, LR 11:325 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 20:

**§14135. Minimum Specifications for Termite Control Work**

A.1. . . .

2. The commission will issue a listing of chemicals approved by the commission for termite control work. The listing shall become effective upon publication in the *Louisiana Register* and shall remain in effect until changed by the commission. The commission may supplement its listing whenever any new chemical is approved for termite control work and may also remove a previously approved chemical from its approved listing by publication in the *Louisiana Register*. Upon publication of the listing of chemicals approved for termite control work, all previous listings shall be repealed. The commission delegates to the state entomologist the responsibility for publication of the list of chemicals approved by the commission.

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**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3306 (redesignated R.S. 3:3363).

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 20:

**§14153. List of Approved Termiticides**

| Termiticide | Percentage | Termiticide | Percentage |
|-------------|------------|-------------|------------|
| Biflex TC   | .06%-.12%  | Prevail     | .30%-.60%  |
| Demon       | .25%-.50%  | Pryfon      | .75%       |
| Dragnet FT  | .50%-1.0%  | Tenure      | .75%-1.0%  |
| Dursban TC  | 1.0%-2.0%  | Torpedo     | .50%-1.0%  |
| Equity      | .50%-2.0%  | Tribute     | .50%-1.0%  |

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3306.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry,

Structural Pest Control Commission, LR 20:

A public hearing will be held on Monday, March 28, 1994, at 9:30 a.m. at the Department of Agriculture and Forestry building on Florida Boulevard, Baton Rouge, LA. All interested persons may make submissions at that time.

Interested persons may also submit opinions, suggestions or data to Bobby Simoneaux, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806, through March 25, 1994.

Bob Odom  
Commissioner

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

**RULE TITLE: Meetings; List of Approved Termiticides**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs or savings to state or local governmental units are anticipated to result from implementation of the proposed rule changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No effect on revenue to state or local governmental units is anticipated to result from implementation of the proposed rule changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
No costs or economic benefits are anticipated to result to directly affected persons as a result of the implementation of the proposed rule amendments.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No effect on competition or employment is anticipated.

Richard Allen  
Assistant Commissioner

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Used Parts Licensure (LAC 46:V.3303)**

In accordance with the Administrative Procedure Act, R.S. 49:950, and R.S. 32:4(A)(B), the Department of Economic Development, Used Motor Vehicle and Parts Commission proposes to adopt the following rule.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part V. Automotive Industry**

**Subpart 2. Used Motor Vehicle Commission**

**Chapter 33. Automotive Dismantler and Recycler  
§3303. Qualifications and Eligibility for Licensure**

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E. No person, firm, or corporation may advertise, sell or display used parts without first obtaining a used parts dealer's license to do business in this state. All these types license numbers will be prefixed by UP, followed by a four digit number then the current year of license.

1. Used parts are broadly described as those parts necessary for operation of a vehicle. They include, but not limited to, the following: motors, wheels, generators, alternators, water pumps, glass, batteries, radiators, spark plugs, fuel tanks, etc.

2. License fees charged and received by the commission for licenses issued on dealers above shall be the same as for all other dealers licensed by this agency as is described in R.S. 32:754.

3. At least one salesman's license shall be issued for each business. License fee charged and received by the commission shall be the same as for all other salesmen licensed by the commission as is described in R.S. 32:754.

4. A surety bond will not be required for dealers whose principal business is selling used parts.

F. An out of state parts dealer may open a parts business in this state. License for an out of state parts dealer to open a used parts business is \$500 per location.

G. Dealers in rebuilt parts, used tires, and wheel covers are not included herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:752, R.S. 32:754, R.S. 32:772 E., and R.S. 32:773A.(3).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1064 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 20: (May 1994), LR 20:

Interested persons may submit written comments concerning this proposed rule until March 7, 1994 to John W. Alario, Executive Director, Louisiana Used Motor Vehicle and Parts Commission, 3132 Valley Creek Drive, Baton Rouge, LA, 70808.

John W. Alario  
Executive Director

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

**RULE TITLE: Used Parts Licensure**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Implementation costs will not be incurred for the proposed rule. It is anticipated that the commission will utilize existing personnel and equipment, as the same services will be provided.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be an increase in self-generated revenues of approximately \$42,000 as a result of the proposed rule. This is based on licensing approximately 200 additional dealers and 200 additional salesmen.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

These dealers will experience an estimated \$210 increase in the cost of operating their business each year. This increase covers \$200 for the dealer's license and \$10 for the salesman's license. By licensing and regulating these dealers, consumers can be protected and assisted when they purchase used motor vehicle parts. This rule may cause some businesses to close, thereby, increasing revenues for the remaining dealers.

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

By requiring these dealers to be licensed and regulated, hopefully, those dealers who are not reputable will be forced to improve their operations or cease operation.

John W. Alario  
Executive Director

David W. Hood  
Senior Fiscal Analyst

### NOTICE OF INTENT

#### Department of Environmental Quality Office of Air Quality and Radiation Protection Radiation Protection Division

##### Radiation Protection Regulations (LAC 33:XV.Chapters 4, 5 and 10)(NE11)

Under the authority of the Louisiana Environmental Quality Act, particularly R.S. 30:2101 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 Radiation Protection Division regulations, LAC 33:XV.Chapters 4, 5, and 10 (Log NE11).

This rule will amend the Radiation Protection Division's regulations concerning the standards for protection against radiation, industrial radiography storage surveys and quarterly audits, and safety requirements for industrial radiographic equipment, and notices and instructions given to radiation workers within the state. This regulation will incorporate standards set by the NRC in their federal rule published final in the *Federal Register* (Volume 56, Number 98, Page 23391) on May 21, 1991. The NRC states in this rule that "Agreement States" have three years to adopt these regulations. The deadline for Louisiana to adopt this regulation will be early in 1994.

These proposed regulations are to become effective on May 20, 1994, or upon publication in the *Louisiana Register*.

A public hearing will be held on March 28, 1994, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA. 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 please contact David Hughes at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Monday, April 4, 1994, at 4:30 p.m., to David Hughes, Enforcement and Regulatory Compliance Division, Box 82282, Baton Rouge, LA, 70884-

2282 or 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or by FAX number (504)765-0486. Commentors should reference this proposed regulation by the Log NE11. Check or money order is required in advance for each copy of NE11.

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; 3945 North I-10 Service Road West, Metairie, LA 70002; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508 and also at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA.

James B. Thompson, III  
Assistant Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Radiation Protection Regulations

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No significant effect of this proposed rule on implementation costs to state or local governmental units is anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No significant effect of this proposed rule on state or local governmental revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
No implementation cost or economic benefit to directly affected persons is anticipated as a result of this rule, since it is required to maintain authorization from the NRC to regulate radioactive material.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
No significant effect of this proposed rule on competition and employment is anticipated.

Gustave Von Bodungen  
Assistant Secretary

David W. Hood  
Senior Fiscal Analyst

### NOTICE OF INTENT

#### Department of Environmental Quality Office of Solid and Hazardous Waste Solid Waste Division

##### Operator Certification and Training Program (LAC 46:XXIII.Chapters 1-9)(SW09)

Under the authority of R.S. 37:3151-3161 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 operator

certification and training regulations, LAC 46:XXIII (SW09).

The proposed rule adds solid waste processing facilities to the solid waste universe of facilities which require board certified operators, encourages the certification of DEQ employees, defines solid waste facilities by type, requires certified solid waste operators to be on site during the hours the facility is in operation, expands the regulations regarding exemptions, establishes the hours of training required for each level of certification and recertification, and imposes a \$100 late fee for recertification. The proposed action was taken at the direction of the Board of Certification and Training for Solid Waste Disposal System Operators.

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

A public hearing will be held on March 28, 1994, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA. 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 please contact David Hughes at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than Monday, April 4, 1994, at 4:30 p.m., to David Hughes, Enforcement and Regulatory Compliance Division, Box 82282, Baton Rouge, LA 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-0486. Commentors should reference this proposed regulation as SW09. Check or money order is required in advance for each copy of SW09.

This proposed regulation is available for inspection at Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802 and 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; 3945 North I-10 Service Road West, Metairie, LA 70002; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Certification and Training Program (SW09)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no costs or savings involved in the implementation of the proposed rule as existing staff will perform all necessary functions.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Revenues are expected to increase by \$30,200 in FY 93-94 as a result of solid waste operators being certified at facilities which previously did not require certified operators.

Certifications are for four years so this revenue will reoccur. A late recertification fee will increase revenues by approximately \$1,000 per year.

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

Directly affected persons or facilities will pay approximately \$29,200 in certification fees in FY 93-94 and every fourth year thereafter. During the four year certification period, affected persons or facilities will spend approximately \$43,800 on training in solid waste facility operation to meet recertification requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition. There is the possibility that some solid waste operators may lose employment for failure to pass the solid waste operator certification test.

Glenn A. Miller  
Assistant Secretary

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of Solid and Hazardous Waste  
Solid Waste Division**

**Waste Tires (LAC 33:VII.Chapter 105) (SW11)**

Under the authority of the Louisiana Environmental Quality Act, particularly R.S. 30:2301 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 Solid Waste Division regulations, LAC 33:VII.Subpart 2 (Log SW11).

These amended rules provide mechanisms to handle the depositing of currently generated waste tires and to facilitate the cleanup of abandoned waste-tire sites. These amended rules provide new and expanded definitions, and entire sections have been added to provide for implementation of cleanup programs. Act 664 (R.S. 30:2418) requires the department to promulgate rules and regulations to administer and enforce the Waste Tire Program, including providing incentives for the collection and transportation of waste tires, remediating environmental and health problems, and establishing a priority system for the cleanup of existing waste tire piles. Under these proposed changes, the department will be responsible for all disbursements of the waste tire fee.

These proposed regulations are to become effective upon publication in the *Louisiana Register*.

A public hearing will be held on March 28, 1994, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA. 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 please contact David Hughes at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Such comments

should be submitted no later than Monday, April 4, 1994, at 4:30 p.m., to David Hughes, Enforcement and Regulatory Compliance Division, Box 82282, Baton Rouge, LA 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810 or to FAX number (504)765-0486. Commentors should reference this proposed regulation by the Log SW11. Check or money order is required in advance for each copy of SW11.

This proposed regulation is available for inspection at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA and at the following DEQ office locations from 8:00 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; 3945 North I-10 Service Road West, Metairie, LA 70002; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Waste Tires**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
Implementation costs to the Department of Environmental Quality are approximately \$225,650 for FY 94-95 as a result of adding six employees to administer the rule. These employees will be used to handle enforcement, permitting, and recycling activities. Implementation savings to local governments are summarized in Part III.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
There will be no effect on local government revenue collections as a result of this proposed rule. State revenue collections will increase by approximately \$3 million per year due to changes in the method that current fees are collected and disbursed.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**  
With this proposed rule, there will be no effects on the purchaser of new tires. This proposed rule will provide cost savings to parish and municipal governments. They will receive administrative relief from current regulations and be provided with lower cost waste tire cleanups. Local governments can also enter into agreements with the department and receive payments for processing waste tires.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**  
These proposed regulations will have no negative impact on competition and employment within the state. Waste tire processing facilities will receive incentive monies to stimulate market development for processed tire material. The Department of Environmental Quality will also enter into agreements for the cleanup of promiscuous waste tire sites,

providing opportunity for new jobs.

Glenn A. Miller  
Assistant Secretary

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Office of the Governor  
Commission on Law Enforcement and Administration of  
Criminal Justice  
Crime Victims Reparations Board**

**Compensation to Victims (LAC 22:XIII.Chapters 1-5)**

In accordance with the provisions of R.S. 1801 et seq., the Crime Victims Reparations Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Crime Victims Reparations Board hereby gives notice of its intent to promulgate rules and regulations relative to the awarding of compensation to applicants.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part XIII. Crime Victims Reparations Board**

**Chapter 1. Authority and Definitions**

**§101. Authority**

Rules and regulations are hereby established by the Crime Victims Reparations Board by order of the Crime Victims Reparations Act, R.S. 46:1801 et seq., Act 250 of the 1982 Louisiana Legislature.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:

**§103. Definitions**

The following terms as used in these regulations, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings:

**Accessory**—an accessory after the fact and also a principal, as defined by the Louisiana Criminal Code.

**Board**—Crime Victims Reparations Board.

**Child**—unmarried person under eighteen years of age; includes a natural child, adopted child, stepchild, illegitimate child, any of the above who is a student not over 23 years of age, and a child conceived prior to but born after the personal injury or death of the victim.

**Claimant**—victim or a dependent of a deceased victim, or the legal representative of either, an intervenor, or in the event of death, a person who legally assumes the obligation or who voluntarily pays the medical or the funeral or burial expenses incurred as a direct result of the crime.

**Collateral source or resource**—source of benefits for pecuniary loss awardable, other than under these rules, which the victim has received or which is readily available to him/her from any or all of the following:

- a. the offender under an order of restitution to the

claimant imposed by a court as a condition of probation or otherwise;

b. the United States or a federal agency, a state or any of its political subdivisions, or an instrumentality of two or more states;

c. Social Security, Medicare, and Medicaid;

d. Workers' Compensation;

e. wage continuation programs of an employer;

f. proceeds of a contract of insurance payable to the victim for pecuniary loss sustained by the victim by reason of the crime;

g. a contract providing prepaid hospital and other health care services, or benefits for disability.

**Dependent**—spouse or any person who is a dependent of a victim within the meaning of Section 152 of the United States Internal Revenue Code.

**Pecuniary loss**—amount of expense reasonably and necessarily incurred by reason of personal injury, as a consequence of death, or a catastrophic property loss, and includes:

a. for personal injury:

i. medical, hospital, nursing, or psychiatric care or counseling, and physical therapy;

ii. actual loss of past earnings and anticipated loss of future earnings because of a disability resulting from the personal injury;

iii. care of a child or children enabling a victim or the spouse, but not both of them, to engage in gainful employment;

b. as a consequence of death:

i. funeral, burial, or cremation expenses;

ii. loss of support to one or more dependents not otherwise compensated for as a pecuniary loss for personal injury;

iii. care of a child or children enabling the surviving spouse of a victim to engage in lawful employment, where that expense is not otherwise compensated for as a pecuniary loss for personal injury.

iv. counseling or therapy for any surviving family member of the victim or any person in close relationship to such victim, if such member or person was physically present and directly observed the commission of the crime;

(*Pecuniary loss* does not include loss attributable to pain and suffering.)

c. catastrophic property loss must be so great as to cause overwhelming financial effect on the victim or other claimant and shall be restricted to loss of abode;

d. any other expense associated with the collection and securing of crime scene evidence.

**Reparations**—payment of compensation in accordance with the provisions of the act for pecuniary loss resulting from physical injury, death, or catastrophic property loss by reason of a crime enumerated in the act.

**Victim**—

a. any person who suffers personal injury, death, or catastrophic property loss as a result of a crime committed in this state and covered by the act, but does not include a police officer, firemen, or person whose employment includes the duty to protect the public safety acting within the course and scope of his/her employment; or

b. a Louisiana resident who suffers personal injury or death as a result of a crime described in the act at R.S. 46:1805 except that the criminal act occurred outside of this state and who shows that the state, territory, country, or political subdivision of a country in which the act occurred does not have a crime victims reparations law which covers personal injury or death suffered by the resident. In this subparagraph, *Louisiana resident* means a person who maintained a place of permanent abode in this state at the time the crime was committed for which reparations are sought.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:

### Chapter 3. Eligibility and Application Process

#### §301. Eligibility

To be eligible for compensation, an individual must have suffered personal injury as a result of a violent crime.

##### 1. Contribution

a. The Crime Victims Reparations Board will not make an award to a claimant who is a victim, or who claims an award of reparations through a victim, when any of the following occurs:

i. the victim was convicted of a felony within five years prior to the incident giving rise to the claim;

ii. there is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim;

iii. the victim was engaging in an illegal activity at the time of the criminally injurious conduct that is the subject of the claim.

b. As Louisiana law requires all drivers and front seat passengers to use seat belts, victims not wearing a seat belt and injured or killed by a driver in violation of R.S. 14:98 (DWI), if found eligible otherwise, will have their award reduced. The total maximum award allowed under current policy will be reduced by 50 percent and will be paid directly to the claimant.

##### 2. Collateral Sources

###### a. Restitution

i. The board reserves the right to make an award to a victim/claimant when a court of law has ordered restitution by the defendant.

ii. If the board makes an award, the court will be contacted with a request for a change in the court order to reflect that payments are to be made to the Crime Victims Reparations Fund for the amount paid by the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:

#### §303. Application Process

##### A. Victim/Claimant Responsibility

1. Applications must be sent to the sheriff's office in the parish where the crime occurred. Those that are sent directly to the board office will have the date received entered on the application and then will be sent to the appropriate sheriff's

office.

2. The applications must be signed and dated by the victim/claimant. Only original signatures, no copies, will be accepted. If the victim is a minor, the parent or guardian is the claimant and must sign. If the victim is deceased, the person responsible for the bill is the claimant and must sign the application.

3. The claimant must list each expense being claimed.

4. An itemized bill, not a billing statement, must accompany the application for each expense claimed.

5. The bills must show the victim/claimant as the guarantor. The board will not accept any bills which indicate the board or the sheriff's office is the guarantor.

6. The victim/claimant must file a supplemental application to claim expenses which arise after the original award has been made.

#### B. Sheriff's Office Responsibility

1. Each sheriff will designate at least one staff member to handle the applications of crime victims for the board.

2. The sheriff's staff person, called the claim investigator, will distribute the most current applications, receive, process, and forward them to the board office in a timely manner.

#### C. Board Staff Responsibility

1. The board staff will prepare a summary of each application, giving the maximum allowable award for each category according to current policy.

2. Applications will be placed on an agenda according to the date received at the board office.

3. A consent agenda will be used.

a. Those applications which are approved by the individual board members will be placed on the agenda for the next meeting on the consent ballot which will be circulated at the meeting.

#### D. Appeals

1. If an application is denied and the victim/claimant desires to appeal the board's decision, the victim/claimant must file the appeal within 60 days from the date of the denial letter.

2. The appeal letter should furnish the board with any new information not yet provided that the victim/claimant desires to have presented.

3. The appeal will be scheduled for the next available agenda.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:

### Chapter 5. Awards

#### §501. Payment of Awards

A. Only verified expenses can be reimbursed.

B. When applications lack documentation necessary for a decision or award in total or in part, and adequate effort has been made to acquire that information, the application will be placed on an agenda and the decision and award will be based on that information available. Should the formerly sought information become available, a supplemental application can be filed.

C. Awards to eligible victims or claimants for expenses incurred but not yet paid may be made payable directly to the providers.

D. All checks to providers when paid at less than the full balance owing are marked "PAID IN FULL."

E. If a provider refuses a board check, the check will be reissued to the claimant for the same amount as approved.

F. In those instances in which:

1. an application has been approved for an award; and

2. payment is being made directly to the provider; and

3. the check either has not been sent or has not been negotiated by the provider; and

4. the claimant notifies the board that he has paid the bill, upon verification and return of the check, the check will be voided and reissued for the same amount to the claimant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1801 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:

#### §503. Limits on Awards

##### A. General

1. There will be a \$10,000 cap for awards for all victims with the exception of those victims whose injuries are both total and permanent. For those applications, the board may, at its discretion, award up to \$25,000 depending on availability of funds, lack of collateral resources, and the showing of necessitous circumstances.

2. Any application which is filed as the result of the death of the victim and involves in addition to funeral expenses, expenses for loss of support, care of dependent children for the surviving spouse to work, or counseling for family witnesses, will be assigned one claim number and tracked as a single claim with the deceased listed as the sole victim. Each claimant with separate expenses to claim will complete and sign an application. Those will be assigned the same claim number as they are considered expenses for that victim. The aggregate claims will be subject to the single cap of \$10,000.

##### B. Attorney Fees

1. The board does not reimburse victims for fees charged by an attorney to prepare an application or represent the victim in any way unless the fees result from a hearing ordered by the board.

2. Those reimbursable charges are set at a maximum of \$50 per hour for a total of five hours or \$250.

3. The appeals process does not constitute a hearing. Thus, any fees charged by an attorney to represent a victim/claimant at an appeal are not compensable.

##### C. Funeral Expenses

1. A maximum cap of \$2000 for all services exists. This is to cover the costs of the funeral.

2. Death and/or burial insurance taken out specifically for the purpose of burial must pay first. The amount of life insurance proceeds paid may be considered as a collateral source.

3. The remaining unpaid bills may be reimbursed by the board up to its ceiling and within its limits depending on the basis of need.



4. Documents required:

- a. death certificate signed by the coroner;
- b. funeral/burial verification form completed by a representative of the funeral home; and
- c. itemized bills for services/goods provided.

D. Lost Wages/Earnings

1. When lost wages are part of a claim, lost wages will be considered before out-of-pocket or other medical expenses are considered.

2. The inability to work must be directly related to the victimization and documented by the appropriate medical doctor. That medical opinion is subject to professional review and audit.

3. Violently assaulted victims who do not require medical intervention (i.e., doctor visit, emergency room treatment) will be allowed a reimbursable recuperation period:

- a. if no sick time or other compensation is available, the board may grant up to five working days of lost wages;
- b. wage verification by the employer is required.

4. The board will reimburse lost wages/earnings with a maximum of \$5200:

- a. the board will award up to \$200 per week based on net, after-tax, or take home pay;
- b. if only gross income is provided, the board will award at 80 percent of gross up to the \$200 cap.

5. Vacation, annual, personal, and sick leaves, if available, shall be used by the victim during the disability period and are not reimbursable expenses.

6. If Workers' Compensation or other private disability/income protection insurance is available, those policies must be paid out first before the board considers a claim for lost wages.

7. If a victim does not return to work, the lost wage period will be no longer than the payment period paid by the Workers' Compensation program.

8. If a person is not gainfully employed or is not receiving entitlement at the time of the crime, then no lost wages can be determined nor awarded.

9. Documents required:

- a. employment/wage verification form completed and signed by the employer;
- b. medical expense verification form signed by the physician, stating injuries are crime related and giving the disability period;
- c. individual federal or state tax return for the last year before the crime; and
- d. all W-2 statements of the victim that were filed with the tax return.

10. Only the following list of physicians can legally determine physical disability:

- a. medical doctor;
- b. oral surgeon;
- c. psychiatrist;
- d. physiatrist;
- e. ophthalmologist;
- f. surgeon.

11. If a victim is initially treated by one doctor and that doctor refers the victim to another doctor, the referral doctor can determine disability from the date of the incident.

12. Lost earnings will require the same documents with the exception of the employer/wage verification form.

E. Loss of Support

1. For loss of support for a surviving spouse or other dependent to be considered, the following documentation must be provided:

- a. death certificate signed by the coroner;
- b. individual federal and state tax return for year before the crime to show dependency of claimant;
- c. employment/wage verification completed and signed by the victim's employer;
- d. verification of life insurance claimed by dependent filing application; and
- e. documentation that Social Security or other pension benefits are not available to surviving spouse or dependents.

2. Loss of support for a surviving spouse may be awarded at the discretion of the board when no other collateral resources exist and the inability to work exists or the opportunity to find work could be delayed due to age, frailty, and lack of previous work experience.

3. The board will reimburse loss of support with a maximum of \$5200.

- a. The board will award up to \$200 per week based on net, after-tax, or take home pay.
- b. If only gross income is provided, the board will award at 80 percent of gross up to the \$200 cap.

F. Ambulance

1. A maximum cap of \$250 exists for transport.
2. Air transport services are considered ambulance services and reimbursed as such.
3. The board will pay 65 percent of the outstanding balance of the medical portion of the transport bill.
4. If the ambulance bill is part of the total hospital bill and the total hospital bill is under \$10,000, the ambulance transfer bills will be isolated and paid separately. If the total bill is over \$10,000, the ambulance charges will not be isolated for payment.

G. Medical Expenses

1. The board reserves the right to audit any and all billings associated with medical care. All treatment must be considered "usual and customary" and be directly related to the victimization.

2. The board will not pay any interest, finance, or collection fees as part of the claim process.

3. The board will pay only 65 percent of all outstanding charges after any third party payment sources up to the statutory limits.

4. If the total outstanding charges exceed the case cap of \$10,000, then all providers listed in the claim will be paid out at that actual percentage those bills are in relation to the available case funds.

5. Out-of-pocket paid monies will be reimbursed to the victim prior to applying this payment schedule.

6. For mental health services as a medical expense, the following will apply:

- a. This expense will only be considered under the most unusual and controlled circumstances. Otherwise, the current out-patient caps will apply to all mental health services.
- b. All psychiatric hospitalized in-patient care is subject

to the following caps:

i. the board will not reimburse for any intake evaluation or psychological testing;

ii. the board will not reimburse for any more than one in-patient treatment, group or individual, per day. Support or family day sessions and "community" meetings are not reimbursable;

iii. all provider/therapist's charges are reimbursed at the same hourly rate as out-patient mental health services, that is:

(a). M.S./M.S.W (L.P.C./B.C.S.W.) \$60/hour;

(b). Ph.D./M.D. (Board Certified) \$75/hour;

(c). Group Therapy \$25/session.

c. No occupational therapy nor recreational therapy charges are reimbursable. Charges for "special school" services are not reimbursable.

d. No medication or macrobiotic supplements other than traditional psychiatric medications and analgesics are reimbursable.

e. Payment for all allowable charges will be made at 50 percent rate and payment will be marked "PAID IN FULL. Acceptance of this payment indicates acceptance as payment in full."

f. All collateral sources must pay out limits before the board will consider payment. All outstanding bills after such third party payment will be subjected to the above limits and caps.

7. Only those medicines and drugs prescribed by a licensed physician are compensable.

8. Reimbursable providers include licensed medical doctors, dentists, eye doctors, chiropractors, osteopaths, pediatricians, psychiatrists, psychologists, physical therapists, etc.

9. Compensable medical services include emergency ambulance service, medical examinations, x-ray and laboratory services, whirlpool baths ordered by a doctor.

10. Only services of a nurse as prescribed by a licensed physician are compensable.

11. Aids such as hearing aids, false teeth, eyeglasses, contact lenses, crutches, and wheelchairs needed as a direct result of the crime or that were damaged or destroyed during the crime are compensable.

12. Documents required include:

a. itemized bills;

b. copies of canceled checks showing payments by victim/claimant;

c. copies of applicable insurance explanation of benefits.

#### H. Travel Expenses

1. Transportation costs other than the initial ambulance service are reimbursable only when required medical care is not available locally. Certification is required by the physician of record that local medical care is unavailable. Allowable private vehicle mileage for out of town travel is reimbursed at \$.25 per mile.

#### I. Mental Health Counseling

1. It is the board's opinion that the majority of those victimized by violent crime will not require long-term counseling, but may need crisis management counseling services. Short-term counseling may be needed for another

segment of the victim population.

2. A total services cap exists of \$2000 maximum for the life of the case.

3. The board will compensate only one session per week, individual or group therapy, for a total of 26 weeks maximum.

4. Such services are capped at six months from the date of the first visit. Board approval must be obtained in advance for any extension beyond this time limit. Extenuating circumstances have to be marked and substantially documented.

5. Treatment plans completed by the therapist of record are required for consideration of mental health expenses. The therapist must state that the psychological trauma involved is a direct result of the crime. Treatment plans must be fully documented in a "problem" and "intervention" type of format. Detail must be provided for both symptom and intervention. Single word descriptors such as "nightmares" or "supportive counseling" will not suffice. Such treatment plans will be returned and the case deferred or denied until revised. Periodic review will be requested for any unusual activity or charges.

6. No reimbursement for evaluation, testing, preparation of reports, or court support time will be made.

7. All payments for services are open to audit by the board.

8. Providers must be "State of Louisiana Board" licensed psychiatrists, professional psychologists, professional counselors, or certified social workers and are reimbursed at the following rates

a. M.D. Board Certified Psychiatrists \$75/hour;

b. Ph.D. Licensed Psychologists \$75/hour;

c. M.S. Licensed Professional Counselors \$60/hour;

d. M.S.W. Board Certified Social Worker \$60/hour;

e. Group therapy rates \$25/session(90 minute minimum session).

9. The board will not compensate services performed by unlicensed providers or any other licensed provider not included above (e.g., R.N., BCSAC, etc.)

10. Psychiatric inpatient hospitalization is not promoted by the board. If under very unusual circumstances such is required, prior approval and notice must be secured from the board. All such treatment is limited to the caps and procedures listed under "medical" services.

11. For crimes of the past that are discovered later on in a victim's life, the board will not consider payment on those incidents for those victims over the age of majority (18 years) that exceed a three year period between the incident and the exposure of the memory of the incident.

#### J. Catastrophic Property Loss

1. A maximum of \$10,000 may be awarded if a victim's abode is owned and the abode/contents are destroyed by criminal act.

2. This must produce a "verifiable" overwhelming financial effect for that person.

3. This is considered when no insurance exists or the ability to rehabilitate the structure is precluded due to lack of personal resources.

4. In order to prove "verifiable" loss, the victim must submit tax returns for the two prior years, a statement of net

worth, a copy of homeowners's policy, a copy of the insurance claim adjustor's report, and the Fire Marshal's Incident Report, if applicable.

#### K. Vehicular Incidents

1. Eligible expenses include those resulting from death or personal injury as outlined in the statute if they are incurred resulting from DWI or hit and run offenses, fleeing felon incidents, or injuries intentionally inflicted with a motor vehicle, boat or aircraft.

2. Vehicular accident related injuries, other than those caused by the above are not compensable.

3. Documents required include:

- a. Motor Vehicle Traffic Accident Report; and
- b. results of blood alcohol test or drug screen where applicable.

#### L. Child Care Expenses

1. A maximum cap of \$1000 exists for eligible child care expenses.

2. The board may award up to \$50 per week per child, up to a maximum of \$100 per week per family.

3. The service provider need not be licensed; however, if the provider is not licensed, the board will pay up to 50 percent of the standard rate.

4. Documents required include:

- a. copies of bills or receipts which indicate total costs for child care expenses;
- b. copies of canceled checks indicating payment;
- c. copies of previous year tax return to indicate dependent child status; and
- d. copies of any applicable court documents indicating legal responsibility claimant has over dependent child.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1801 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, Crime Victims Reparations Board, LR 20:

Interested persons may submit written comments on this proposed rule no later than 5 p.m., March 30, 1994, to: Rosanna M. Hollingsworth, Program Manager, Crime Victims Reparations Board, 1885 Wooddale Blvd, Room 708, Baton Rouge, LA 70806.

A public hearing will be held at 4 p.m., March 30, 1994, 1885 Wooddale Blvd., Seventh Floor Conference Room, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed rules.

Fernest Benoit  
Chairman

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Compensation to Victims (LAC 22:XIII. Chapters 1-5)

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

It is estimated that the Crime Victims Reparation Program will incur a maximum cost of \$500 for copying and mailing resulting from publication of these rules. Because this action is

a formalization of existing operating procedures, policies, and guidelines, there is no fiscal impact on any other state or local governmental unit.

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

These rules will produce no effect on revenue collections of state or local governmental units.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There is no change in the requirements of application nor are the benefits awarded affected.

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

There is no effect on competition or employment in the public or private sector caused by the publication of these rules.

Michael A Ranatza  
Executive Director

John R. Rombach  
Legislative Fiscal Officer

### NOTICE OF INTENT

#### Office of the Governor Division of Administration Office of Contractual Review

#### Retroactive Claims Recovery Services (LAC 34:V.103)

In accordance with R.S. 49:950 et seq. of the Administrative Procedure Act, and R.S. 39:1490(B), the Office of the Governor, Division of Administration, Office of Contractual Review intends to amend LAC 34:V.103, affecting the procurement of consulting services contracts to read as follows:

The purpose of this amendment is to provide for the procurement of Retroactive Claims Recovery Services through a request for proposal, in accordance with R.S. 39:1503, to comply with federal requirements for the collection of third-party liability claims for medical services performed by the Department of Health and Hospitals and the Louisiana Health Care Authority. The current contractual services terminate December 31, 1993, and conflicts existing as to the appropriate procedure will not allow the contracts to be in place by this time to avoid possible budget deficits, or sanctions or penalties by the United States if these agencies do not have contracts to collect these monies. An emergency rule regarding this amendment was previously adopted, became effective on November 1, 1993, for 120 days, and was published in the November 20, 1993 *Louisiana Register*, pages 1405-1406.

The text of this proposed rule may be read in its entirety in the Emergency Rule Section of this February 20, 1994 *Louisiana Register*.

Interested persons wishing to comment on the proposed rule may do so in writing to: Susan H. Smith, Director, Office of Contractual Review, Box 94095, Baton Rouge, LA 70804-9095. Written comments will be accepted through the close

of business at 5 p.m. on March 31, 1994.

Susan H. Smith  
Director

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

**RULE TITLE: Procurement of Professional, Personal,  
Consulting and Social Services**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no implementation costs or savings to state or local government units.
- 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 government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
There will be no cost or economic benefit to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will be no effect on competition and employment.

Susan H. Smith  
Director

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

Adult Protective Services (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 the GOEA Policy Manual, effective May 20, 1994. The purposes of this rule change are to reflect current practice based on budget and staff levels in the Adult Protective Services for the Elderly program and to delete from policy all procedural matters. The procedures will be incorporated into a procedures manual. The proposed rule change complies with R.S. 14:403(2).

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 11. Elderly Affairs**

**§1239. Adult Protective Services for the Elderly**

\* \* \*

C.1. Intake. The intake process includes those activities whereby reports concerning the abuse, neglect and/or exploitation of adults are received, evaluated for appropriateness, and either accepted or not accepted for investigation. All intake information shall be documented on Form EPS-1.

2. - 7.a. ...

b. If a report is not accepted for investigation, the action taken on the report must be documented on Form EPS-1.

D.1. - 2. ...

3.a. High Priority Cases. Investigation shall be initiated within eight work-day hours of receipt of the report.

3.b. - 5. ...

6. Time Frame. The investigation shall be completed and a decision made regarding disposition of the case within 45 calendar days of the date the initial report was received. If this time frame cannot be met, the reasons must be documented in the case record.

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 APS 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 APS program manager or his/her designee prior to referral.

8. Exceptions to APS Investigation Procedures

a. Not Accepted for Investigation

i. Spouse Abuse. Allegations of spouse abuse will not be accepted for investigation unless the adult meets the criteria for eligibility as described in §1239.C.2. Reporters who allege spouse abuse for adults not eligible for adult protective services shall be referred to local law enforcement agencies or to battered women's shelters, if appropriate.

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 cases where a resident of a nursing facility is alleged to be abused or exploited by someone outside the facility or while visiting outside the facility.

iii. Mental Health and Mental Retardation Facilities. Allegations of abuse/neglect of an adult who resides in a facility, group home or hospital operated by the Division of Mental Health or Mental Retardation/Developmental Disabilities shall not be accepted for investigation. Reporters shall be referred to the appropriate regional level offices.

b. Accepted for Investigation

i. Board and Care Homes. Allegations of abuse/neglect of an adult who resides in a board and care home may 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. Services

1. Service Assessment. When a decision has been made that a case is valid and the adult consents to services or lacks the ability to make a competent decision, a service assessment shall be conducted and a plan developed.

2. Service Plan

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

b. Participation of the Adult. All aspects of the service plan shall be developed with the ongoing participation and involvement of the mentally competent adult. For other adults, the following situations may apply.

i. When the adult has a legally appointed curator (guardian), that person is the spokesperson for the adult.

ii. When the adult has an informal (nonlegal) representative, usually a family member (not an alleged perpetrator), this person should participate in the development of the service plan.

iii. When the adult appears to be mentally incapacitated but does not have either a legal or nonlegal representative, the APS worker should obtain as much participation as is feasible and practical, dependent upon the adult's current situation.

**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:

A public hearing on this proposed rule change will be held on Wednesday, March 30, 1994, in the GOEA Conference Room, 4550 North Boulevard, Second Floor, Baton Rouge, LA 70805, at 1:30 p.m. All interested parties will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing.

Interested persons may submit written comments to the following address: Governor's Office of Elderly Affairs, Box 80374, Baton Rouge, LA 70898-0374. Betty Johnson is the person responsible for responding to inquiries concerning this proposed rule. Comments will be accepted until 5 p.m., March 29, 1994.

James R. Fontenot  
Director

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

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

The proposed rule change will not result in costs or savings to state or local governmental units. Change reflects actual practice in the Adult Protective Services for the Elderly Program (APS) as determined by budget and staff levels. Leaving the rule as is could subject the agency to liability due to the inability of APS workers to respond immediately to reports of abuse or neglect which places an older individual in a life threatening situation.

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

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

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

This rule change could affect older adults in immediate danger of death or serious bodily harm by increasing the response time of adult protective services workers from "immediately" to "within eight work-day hours." However, this is not anticipated due to the fact that this reflects current practice.

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

The proposed rule change will not affect competition and employment.

James R. Fontenot  
Executive Director

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Board of Medical Examiners**

**Occupational Therapists Continuing Education Credits  
(LAC 46:XLV.1947-1979)**

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3012(B) and 37:1270(B)(6), and the provisions of the Administrative Procedure Act, intends to amend its rules governing the licensure of occupational therapists and occupational therapy assistants to implement and provide for the requirement of continuing education as a condition of annual renewal of licensure, as prescribed by Act 566 of 1993. LAC 46:XLV, Subpart 2, Chapter 19, §§1901-1979. The proposed rule amendments are set forth below.

LAC 46:XLV.1947, 1949, 1957, 1959, and 1961 are hereby amended, and §§1963-1979 are hereby adopted, so that, as amended and adopted said Sections shall read and provide as follows.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLV. Medical Profession**

**Chapter 19. Occupational Therapists and Occupational  
Therapy Assistants**

**Subchapter F. License Issuance, Termination, Renewal  
Reinstatement**

**§1947. Renewal of License**

A. Every license issued by the board under this Subchapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal, upon forms supplied by the board, together with the renewal fee prescribed in Chapter 81 of these rules and documentation of satisfaction of the continuing professional education requirements prescribed by Subchapter H of these rules.

B. An application for renewal of license form shall be mailed by the board to each person holding a license on or before the first day of December of each year. Such form shall be mailed to the most recent address of each licensee as reflected in the official records of the board.

C. A license which has expired for 60 days or less may be renewed by submitting to the board an application for renewal upon forms supplied by the board together with the late renewal fee prescribed in Chapter 81 of these rules.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 20:

#### **§1949. Reinstatement of License**

A. A license which has expired may be reinstated by the board subject to the conditions and procedures hereinafter provided.

B. An application for reinstatement shall be made upon forms supplied by the board and accompanied by two letters of character recommendation, one from a reputable physician and one from a reputable OTR of the former licensee's last professional location, together with the applicable late renewal and reinstatement fees prescribed in Chapter 81 of these rules.

C. Reinstatement of a license that has expired for two years or more may include additional fees and requirements as the board deems appropriate, including but not limited to reexamination in accordance with Subchapter D, satisfaction of the requirements of Subchapter H with respect to continuing professional education, and/or complying with all requirements and procedures for obtaining an original license.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 20:

### **Subchapter G. Occupational Therapy Advisory Committee**

#### **§1957. Constitution of Committee**

To assist the board in the review of applicants' qualifications for licensure and renewal of licensure under this Chapter, the board shall constitute and appoint an Occupational Therapy Advisory Committee (advisory committee) which shall be organized and shall function in accordance with the provisions of this Subchapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 20:

#### **§1959. Composition; Appointment**

A. The advisory committee shall comprise nine members who shall be occupational therapists licensed by the board and practicing and residing within the state of Louisiana, consisting, more particularly, of one licensed occupational therapist proficient in and representing each of the following areas of occupational therapy practice: (1) administration and management, (2) developmental disabilities, (3) education, (4) gerontology, (5) mental health, (6) physical disabilities, (7) sensory integration, (8) technology, and (9) work programs.

B. Each member of the advisory committee shall be appointed by the board from among a list of not fewer than three nominees for each position submitted to the board by the Louisiana Occupational Therapy Association, Inc. (LOTA), or its successor. Each nomination so submitted shall be accompanied by a personal resume or curriculum vitae for the nominee together with a written consent to serve if appointed, subscribed by such nominee.

C. Insofar as possible or practical, in their respective nomination and appointment of members to the advisory committee, the LOTA and the board shall maintain geographic diversity so as to provide membership on the advisory committee by occupational therapists residing and practicing in north, central, southwestern and southeastern Louisiana.

D. Within 10 days of the effective date of these rules, the LOTA shall submit to the board the list of nominees, from which the board shall appoint nine members to the advisory committee, four appointees designated to serve terms expiring on the last day of the year of appointment and five to serve terms expiring on the last day of the year succeeding the year of appointment. Thereafter, each member of the advisory committee shall serve a term of two years, subject to removal at any time at the pleasure of the board. Members appointed to the advisory committee by the board to fill a vacancy occurring on the advisory committee other than by expiration of the designated term shall serve for the unexpired term. A member of the advisory committee may be appointed by the board for not more than three consecutive terms.

E. Following the board's appointment of the initial advisory committee pursuant to the preceding Subsection, appointments to the advisory committee shall be made by the board pursuant to Subsection B hereof. LOTA nominations for normally occurring vacancies on the advisory committee shall be annually delivered to the board on or before November 1. Other than the initial appointments provided for herein, board appointments to the advisory committee shall be effective when made with respect to appointments for unexpired terms and otherwise shall be effective as of the first day of the year following the date of appointment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 20:

#### **§1961. Delegated Duties and Responsibilities**

A. The advisory committee is authorized by the board to:

1. advise and assist the board in the ongoing evaluation of the occupational therapy licensing examination required by the board;

2. assist the board in examining the qualifications and credentials of and interviewing applicants for occupational therapy licensure and make recommendations thereon to the board;

3. provide advice and recommendations to the board respecting the modification, amendment and supplementation of rules and regulations, standards, policies and procedures respecting occupational therapy licensure and practice;

4. serve as a liaison between and among the board, licensed occupational therapists and occupational therapy

assistants, and occupational therapy professional associations;  
5. receive reimbursement for attendance at board meetings and for other expenses when specifically authorized by the board; and

6. advise and assist the board in the review and approval of continuing professional education (CPE) programs and licensee satisfaction of CPE requirements for renewal of licensure, as prescribed by Subchapter H of these rules, including the authority and responsibility to:

a. evaluate organizations and entities providing or offering to provide CPE programs for occupational therapists and occupational therapy assistants and provide recommendations to the board with respect to the board's recognition and approval of such organizations and entities as sponsors of qualifying CPE programs and activities pursuant to §1969 of these rules;

b. review documentation of CPE by occupational therapist and occupational therapy assistants, verify the accuracy of such documentation, and evaluate and make recommendations to the board with respect to whether programs and activities evidenced by applicants for renewal of licensure comply with and satisfy the standards for such programs and activities prescribed by these rules; and

c. request and obtain from applicants for renewal of licensure such additional information as the advisory committee may deem necessary or appropriate to enable it to make the evaluations and provide the recommendations for which the committee is responsible.

B. In discharging the functions authorized under this Section the advisory committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. All information obtained by the advisory committee members pursuant to §1961.A.2 and 6 shall be considered confidential. Advisory committee members are prohibited from communicating, disclosing or in any way releasing to anyone, other than the board, any information or documents obtained when acting as agents of the board without first obtaining written authorization of the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 20:

#### **Subchapter H. Continuing Professional Education** **§1963. Scope of Subchapter**

The rules of this Subchapter provide standards for the continuing professional education (CPE) requisite to the annual renewal of licensure as an occupational therapist or occupational therapy assistant, as required by §1947 and §1965 of these rules, and prescribe the procedures applicable to satisfaction and documentation of CPE in connection with application for renewal of licensure.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

#### **§1965. Continuing Professional Education Requirement**

A. Subject to the exceptions specified in §1979 to be

eligible for renewal of licensure, an occupational therapist or occupational therapy assistant shall, within each year during which he holds licensure, evidence and document, upon forms supplied by the board, successful completion of not less than 15 contact hours, or 1.5 CPE Unit credits, not less than nine contact hours, or .9 CPEU credits, of which shall be attained through attendance at qualifying programs of not less than three hours in length. With respect to renewal of licensure for 1994 only, an occupational therapist or occupational therapy assistant shall document successful completion of not less than 12 contact hours, or 1.2 CPE Unit credits, not less than six contact hours, or .6 CPEU credits, of which shall be attained through attendance at qualifying programs of not less than three hours in length.

B. A CPE Unit (CPEU) constitutes 10 hours of participation in an organized continuing professional education program approved by the board and meeting the standards prescribed in this Subchapter; one CPE hour is equal to one-tenth of a CPEU.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

#### **§1967. Qualifying CPE Programs**

A. To be acceptable as qualified CPE under these rules a program shall:

1. have significant and substantial intellectual or practical content dealing principally with matters germane and relevant to the practice of occupational therapy;

2. have preestablished written goals and objectives, with its primary objective being to maintain or increase the participant's competence in the practice of occupational therapy;

3. be presented by persons whose knowledge and/or professional experience is appropriate and sufficient to the subject matter of the presentation;

4. provide a system or method for verification of attendance or course completion; and

5. be a minimum of one continuous hour in length.

B. None of the following programs, seminars, or activities shall be deemed to qualify as acceptable CPE programs under these rules:

1. any program not meeting the standards prescribed by Subsection A of this Section;

2. independent study not approved or sponsored by the American Occupational Therapy Association (AOTA) or the Louisiana Occupational Therapy Association, Inc. (LOTA) for the Independent Study Program;

3. any program, presentation, seminar or course of instruction not providing the participant an opportunity to ask questions or seek clarification of specific matters presented;

4. teaching, training or supervisory activities;

5. holding office in professional or governmental organizations, agencies or committees;

6. participation in case conferences, informal presentations, or in-service activities;

7. giving or authorizing verbal or written presentations, seminars, articles, or grant applications.

**AUTHORITY NOTE:** Promulgated in accordance with R.S.

37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

**§1969. Approval of Program Sponsors**

A. Any program, course, seminar, workshop or other activity meeting the standards prescribed by §1967.A sponsored or offered by the American Occupational Therapy Association or the Louisiana Occupational Therapy Association, Inc. shall be presumptively deemed approved by the board for purposes of qualifying as an approved CPE program under these rules.

B. Upon the recommendation of the advisory committee, the board may designate additional organizations and entities whose programs, courses, seminars, workshops or other activities shall be deemed approved by the board for purposes of qualifying as an approved continuing professional education program under §1967.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

**§1971. Approval of Programs**

A. A CPE program sponsored by an organization or entity not deemed approved by the board pursuant to §1969.A may be preapproved by the board as a program qualifying and acceptable for satisfying CPE requirements under this Subchapter upon written request to the board therefor, upon a form supplied by the board, providing a complete description of the nature, location, date, content and purpose of such program and such other information as the board or the advisory committee may request to establish the compliance of such program with the standards prescribed by §1967(A). Any such request for preapproval respecting a program which makes and collects a charge for attendance shall be accompanied by a nonrefundable processing fee of \$75.

B. Any such written request shall be referred by the board to the advisory committee for its recommendation. If the advisory committee's recommendation is against approval, the board shall give notice of such recommendation to the person or organization requesting approval and such person or organization may appeal the advisory committee's recommendation to the board by written request delivered to the board within 10 days of such notice. The board's decision with respect to approval of any such activity shall be final. Persons and organizations requesting preapproval of CPE programs should allow not less than 120 days for such requests to be processed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

**§1973. Documentation Procedure**

A. A form for annual documentation and certification of satisfaction of the continuing professional education requirements prescribed by these rules shall be mailed by the board to each occupational therapist and occupational therapy assistant subject to such requirements with the application for renewal of licensure form mailed by the board pursuant to §1947.B. Such form shall be completed and delivered to the board with the licensee's renewal application.

B. Any certification of CPE not presumptively approved by the board pursuant to these rules, or preapproved by the board in writing, shall be referred to the advisory committee for its evaluation and recommendations pursuant to §1961.A.6.ii. If the advisory committee determines that a program or activity certified by an applicant for renewal in satisfaction of CPE requirements does not qualify for recognition by the board or does not qualify for the number of CPE units claimed by the applicant, the board shall give notice of such determination to the applicant for renewal and the applicant may appeal the advisory committee's recommendation to the board by written request delivered to the board within 10 days of such notice.

The board's decision with respect to approval and recognition of any such program or activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

**§1975. Failure to Satisfy Continuing Professional Education Requirements**

A. An applicant for renewal of licensure who fails to evidence satisfaction of the CPE requirements prescribed by these rules shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 60 days following the mailing of such notice, following which it shall be deemed expired, unrenewed and subject to revocation without further notice, unless the applicant shall have, within such 60 days furnished the board satisfactory evidence, by affidavit, that

1. the applicant has satisfied the applicable CPE requirements;
2. the applicant is exempt from such requirements pursuant to these rules; or
3. the applicant's failure to satisfy the CPE requirements was occasioned by disability, illness or other good cause as may be determined by the board.

B. The license of an occupational therapist or occupational therapy assistant whose license has expired by nonrenewal or been revoked for failure to satisfy the CPE requirements of these rules may be reinstated by the board upon written application to the board, accompanied by payment of a reinstatement fee of \$50, in addition to all other applicable fees and costs, together with documentation and certification that:

1. the applicant has, during each calendar year since the date on which the applicant's license lapsed, expired or was revoked, completed 12 contact hours (1.2 CPEU) of qualifying CPE, and the following additional CPE, as applicable:

- a. If the application for reinstatement is made more than one year and less than three years following the date on which such license lapsed, expired or was revoked, the applicant shall evidence completion of and additional six contact hours (.6 CPEU) of qualifying CPE since the date on which the applicant's license lapsed, expired or was revoked.

- b. If the application for reinstatement is made more than three years and less than five years following the date on which such license lapsed, expired or was revoked, the applicant shall evidence completion of an additional eight contact hours (0.8 CPEU) of qualifying CPE within the 12



months period preceding application for reinstatement.

c. If the application for reinstatement is made more than five years following the date on which such license lapsed, expired or was revoked, the applicant shall evidence completion of an additional 10 contact hours (1.0 CPEU) of qualifying CPE within the 12 months period preceding application for reinstatement; or

2. the applicant has, within one year prior to making application for reinstatement, taken and successfully passed the Recertification Examination of the American Occupational Therapy Association.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

### §1977. Waiver of Requirements

The board may, in its discretion and upon the recommendation of the advisory committee, waive all or part of the CPE required by these rules in favor of an occupational therapist or occupational therapy assistant who makes written request for such waiver to the board and evidences to the satisfaction of the board a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual's satisfaction of the CPE requirements.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

### §1979. Exceptions to CPE Requirements

The CPE requirements prescribed by this Subchapter as requisite to renewal of licensure shall not be applicable to: (i) an occupational therapist or occupational therapy assistant employed exclusively by, or at an institution operated by, any department or agency of the State of Louisiana; or (ii) an occupational therapist or occupational therapy assistant who has held an initial Louisiana license on the basis of examination for a period of less than one year.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:

Inquiries concerning the proposed amendments may be directed in writing to: Delmar Rorison, Executive Director, Board of Medical Examiners, at the address set forth below.

Interested persons may submit data, views, arguments, information or comments on the proposed amendments, in writing, to the Board of Medical Examiners, at Suite 100, 830 Union Street, New Orleans, LA 70112-1499. Written comments must be submitted to and received by the board within 60 days of from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Delmar Rorison  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Occupational Therapists Continuing Education Credits

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated that the proposed rule amendments will result in any additional costs to the Board of Medical Examiners.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is not anticipated that the proposed rule amendments will have any effect on the board's revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
Licensed occupational therapists and occupational therapy assistants who apply for annual renewal of licensure will be required under the proposed rules to obtain and document to the board 1.5 continuing professional education units each year (1.2 during 1993) as a condition to renewal of their licensure. It is estimated that for each such applicant the cost of obtaining such continuing education may represent \$20-\$200 annually. In addition, each such applicant will be required to document the required continuing education in connection with application for licensure renewal, resulting in minimal additional paperwork involving one additional form. The rule amendments should not, however, result in or effect any material increase or reduction of costs or paperwork for such applicants.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
It is not anticipated that the proposed rule amendments will have any impact on competition or employment in either the public or private sector.

Delmar Rorison  
Executive Director

David W. Hood  
Senior Fiscal Analyst

### NOTICE OF INTENT

#### Department of Health and Hospitals Board of Practical Nurse Examiners

Adjudication, License Suspension, Revocation, Financial  
Interests Disclosure, and Patient Referrals  
(LAC 46:XLVII.306 and 307)

Notice is hereby given that the Board of Practical Nurse Examiners, under the authority vested in R.S. Title 37:961-979, plans to amend LAC 46:XLVII, Chapter 3, at its meeting on June 3, 1994 as follows: to repeal and repromulgate §307, Rules and Adjudication and License Suspension and Revocation Proceedings; §307 will become new §306. Additionally, in accordance with Acts 675 and 827, 1993, the board plans to promulgate new §307, Disclosure of Financial Interests and Prohibition on Remuneration for Patient Referrals.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLVII. Nurses**

**Subpart 1. Practical Nurses**

**Chapter 3. Board of Practical Nurse Examiners**

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

A. All adjudication proceedings (as defined in R.S. 49:951) and license suspension and/or license revocation or probation proceedings conducted by the board shall be in accordance with the Administrative Procedure Act, R.S. 49:955 et seq.

B. All proceedings calling for the suspension, revocation or probation of a license shall begin with the receipt by the board of allegation(s) pertaining to the violation(s) by a licensee of any provisions of R.S. 37:961-979.

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

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

E. The allegation(s) against a licensee may be concluded in an informal proceeding without formal hearing if the executive director does not deem the allegation(s) to be sufficiently serious. The informal resolution of the allegation(s) may be done by correspondence between the executive director and a licensee; by conference of the executive director and a licensee; or by consent order between the board and a licensee.

F. If such allegation(s) are concluded by this informal procedure, any result and/or recommendations shall be submitted by the executive director to the board for approval.

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

1. the allegation(s) are sufficiently serious;
2. the licensee fails to respond to the board's correspondence concerning the allegation(s);
3. the licensee's response to the board's correspondence is insufficient, unsatisfactory, or fails to be convincing that no action is warranted;
4. an informal proceeding has failed to resolve all of the issues or allegation(s).

H. Formal hearing procedures shall commence with the filing of a formal complaint by the board indicating the specific allegation(s) and violation(s) of one or more of the provisions under R.S. 37:961-979.

I. A notice of formal complaint shall be sent by certified mail to the last known address of the accused licensee. If the mailing is not returned to the board, it is assumed to have been received by said licensee as it is the licensee's obligation and duty to keep the board informed of his/her whereabouts.

J. The licensee shall return his/her response to the complaint to the board within 10 days or shall be deemed to have waived his/her right to a hearing. In response, the licensee shall either deny or admit the allegations of the complaint and shall either request a hearing before the hearing officer or waive his/her right to said hearing.

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

L. If a licensee requests a formal hearing before the hearing officer, the executive director or his/her designee shall schedule such hearing and notify the licensee of the place, date and time fixed for the formal hearing by certified mail at least 10 days prior to said hearing.

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

**N. Discovery**

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

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

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

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

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

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

iii. the information requested does not include those documents referred to in §307.C-D; and

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

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

4. Prior to a formal hearing an accused licensee, his/her

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

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

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

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

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

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

R. The board shall make a decision based on the hearing officer's report and determine what sanctions, if any, should be imposed and issue an appropriate order with respect thereto. This order of the board shall be sent to the licensee by certified mail.

S. Sanctions imposed by the board may include reprimand, probation, suspension, revocation, as well as penalties provided under R.S. 37:961 et seq., as amended by Act 1075, of the 1986 Regular Session, or any combination thereof.

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

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

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

practical nursing in the state of Louisiana during the suspension period so designated.

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

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

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

T. A petition by a party for reconsideration or rehearing must be in proper form and filed within 30 days after notification of the board's decision. The petition shall set forth the grounds for the rehearing, which include one or more of the following:

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

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

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

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

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

1. is guilty of fraud or deceit in procuring or attempting to procure a license to practice practical nursing;

2. is guilty of a crime;

3. is unfit, or incompetent by reason of negligence, habit or other causes;

4. is habitually intemperate or is addicted to the use of habit-forming drugs;

5. is mentally incompetent; or

6. is guilty of unprofessional conduct; unprofessional conduct includes, but is not limited to the following:

a. failure to practice practical nursing in accordance with the standards normally expected;

b. failure to utilize appropriate judgement in administering nursing practice;

c. failure to exercise technical competence in carrying out nursing care;

d. violating the confidentiality of information or knowledge concerning a patient;

e. performing procedures beyond the authorized scope of practical nursing;

f. performing duties and assuming responsibilities

within the scope of the definition of practical nursing when competency has not been achieved or maintained, or where competency has not been achieved or maintained in a particular specialty;

- g. improper use of drugs, medical supplies, or patients' records;
- h. misappropriating personal items of an individual or the agency;
- i. falsifying records;
- j. intentionally committing any act that adversely affects the physical or psychosocial welfare of the patient;
- k. delegating nursing care, functions, tasks, or responsibilities to others contrary to regulation;
- l. leaving a nursing assignment without properly notifying appropriate personnel;
- m. failing to report, through the proper channels, facts known regarding the incompetent, unethical, or illegal practice of any health care provider;
- n. has violated any provisions of this Part (R.S. 37:961-979 as amended 1991) or aid or abet therein.

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

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

**HISTORICAL NOTE:** Repealed and repromulgated by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 20:

### **§307. Disclosure of Financial Interests and Prohibition on Remuneration for Patient Referrals**

A. As used in this chapter, the following terms shall have the meaning specified:

**Disclose to the Patient**—the practical nurse makes known to the patient at the time a referral is made that the practical nurse has a financial or ownership interest in the facility or entity to which the patient is referred. The practical nurse shall also inform the patient of the patient's freedom to choose an alternate provider.

**Financial Interest**—any ownership or investment interest established through debt, equity, or other means and held by a practical nurse or a member of a practical nurse's immediate family, or any form of direct or indirect remuneration for referral.

**Health Care Provider**—a person, partnership, corporation, or any other organization licensed by this state to provide health care or professional services, including, but not limited to, providers of clinical laboratory services, diagnostic services, medicinal suppliers, therapeutic services, physicians, chiropractors, podiatrists, optometrists, physical therapists, psychologists, licensed professional counselors, registered or licensed practical nurses, pharmacists, and any officer, employee, or agent thereof acting in the course and scope of his/her employment.

**Ownership Interest**—the possession of equity in the capital, the stock, or the profits of an entity.

**Payment**—money or anything of monetary value, including gifts, gratuities, favors, entertainment or loans.

**Person**—an individual, a corporation, a company, an association, a firm, a partnership, or any other organization.

**Practical Nurse**—a licensed practical nurse and/or a practical nursing student/graduate.

**Referral**—the act of prescribing, ordering, directing, re-directing, or recommending to a patient a specific facility or entity which provides a health-related service, test, pharmaceutical appliance or device, by means of prescription, recommended course of treatment, or direction concerning diagnostic or therapeutic treatment or service.

#### **B. Disclosure of Financial Interests**

##### **1. Use of Patient Disclosure Forms**

a. It is the practical nurse's responsibility to disclose to the patient a financial or ownership interest when making a referral to any health care provider outside the same health care provider as that of the referring practical nurse. Meaningful disclosure shall be given to each patient at the time a referral is made. The disclosure must be made in writing. The board recommends that the disclosure be dated and signed at the time of referral by the practical nurse and the patient, and that the practical nurse maintain written evidence of the disclosure. If the practical nurse delegates the disclosure to another person in the practical nurse's office, the board recommends that the disclosure be written, dated, and signed by the person making the disclosure and by the patient.

b. The memorialization of the disclosure shall be substantially in the following form: I acknowledge that I have been advised by my practical nurse that he/she has a financial or ownership interest in the facility or entity to which he/she has referred me, and that my practical nurse has advised me that I am free to choose another facility or entity to provide the service, drug, device or equipment recommended.

c. Written evidence shall constitute presumptive evidence that the practical nurse made the required disclosure in an enforcement proceeding before the board. The disclosure to the patient is not the act of the patient signing the form, but is the act of the practical nurse disclosing to the patient the nurse's financial or ownership interest and advising the patient of the patient's freedom of choice.

2. **Guidelines for Disclosure.** If the patient is a minor, unconscious, of unsound mind, or otherwise incompetent to understand freedom of choice in the selection of a facility or entity, disclosure shall be made to the guardian, spouse, or closest adult next of kin. Disclosure of a practical nurse's interest cannot be accomplished unless the patient is competent to understand his/her freedom of choice. A practical nurse will not be disciplined for failure to disclose if an emergency prevents consulting the patient or the patient's next of kin.

3. **Cross-Referral Arrangements.** A practical nurse shall not enter into any arrangement or scheme, including cross-referral arrangements, if the practical nurse knows, or should know that the arrangement or scheme has the principal purpose of ensuring referrals by the practical nurse to a particular entity, which referral, if made directly by the practical nurse would be a violation of this Section.

#### **B. Prohibition on Remuneration for Patient Referrals**

1. **Prohibited Referrals.** A practical nurse shall not offer, make, solicit, or receive any form of direct or indirect payment or remuneration or benefit for the referral or

solicitation of patients for professional services.

2. Cross-Referral Arrangements. A practical nurse shall not enter into any arrangement or scheme, including cross-referral arrangements, if the practical nurse knows, or should know that the arrangement or scheme has the principal purpose of ensuring referrals by the practical nurse to a particular entity, which referral, if made directly by the practical nurse would be a violation of this section.

3. Permissible contracting activities

a. A referral of a patient to another person or practitioner within the same health care provider, providing that the practical nurse is not paid on a split-fee basis, is not a violation of this section.

b. Payments representing a return on investment based upon a percentage of ownership are not considered a direct or indirect payment for the purposes of this Section.

c. Any activity permissible under the corresponding provisions of Title XVIII of the Social Security Act shall not be a violation of this Section.

C. Sanctions and Restitution Provisions

1. Any practical nurse who violates the provisions of this Section shall be subject to the same sanctions as outlined in §306 of this Chapter.

2. Any practical nurse who violates the provisions in this Section shall refund all sums received in payment for the goods and services furnished or rendered without disclosure of financial interests. Such a refund shall be paid to the individual patient, third party, payor, or other entity to whom the payment is entitled.

3. All complaints of conduct alleged to be in violation of this Section shall be received and investigated by or under the direct control and supervision of the board or its counsel pursuant to the provisions of this Chapter as outlined in §306.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Practical Nurse Examiners, LR 20:

Interested parties may present their view and comments through May 31, 1994, to the Board of Practical Nurse Examiners, 1440 Canal Street, Suite 1722, New Orleans, LA 70112.

Terry L. DeMarcay  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Education and Licensure to Practice**

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

Section 306.V and 307.C.1 would assist in defraying cost of court reporter and attorney fees which amount to approximately \$8,000 - \$10,000 per year.

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

Section 306.V and 307.C.1 would result in an estimated \$6,000 per year to assist in defraying cost of court reporter and attorney fees.

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

Persons whose licenses are disciplined by the board will be required to pay fines not to exceed \$500 (LRS Title 37, Chapter 11. Nurses, Part II. Practical Nurses).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effect on competition and employment.

Terry L. DeMarcay  
Executive Director

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Sanitary Code—Control of Rabies and Other  
Zoonotic Diseases (Chapter III)**

The Department of Health and Hospitals, Office of Public Health intends to amend Chapter III of the State Sanitary Code as it relates to the control of rabies and other zoonotic diseases. It is amended as follows:

**Chapter III**

**The Control of Rabies and Other Zoonotic Diseases**

**3:001 Definitions.** Unless otherwise specifically provided herein, the following words and terms used in this chapter of the Sanitary Code and all other chapters which are adopted or may be adopted are defined for the purpose thereof as follows:

**Cat**—any member of the *Felis domesticus* classification (commonly known as a "domestic cat"), excluding those animals that are cross-bred animals resulting from the mating of *Felis domesticus* with members of other segments of the feline classification.

**Dog**—any member of the *Canis familiaris* classification (commonly known as a "domestic dog"), excluding those animals that are cross-bred animals resulting from the mating of *Canis familiaris* with members of any other segment of the canine classification, such as, but not limited to, coyotes, wolves, foxes and jackals.

**Local Health Authority**—any parish or municipal health officer, department or other agency charged with the responsibility of preserving the public health.

**Owner**—any person who keeps in his care, or who harbors, or who has the custody of, or who is the registered owner of a dog or other animal.

**State Health Officer**—as defined in Chapter I of this code includes his duly authorized representative, provided such representative is schooled in one of the biomedical sciences and that representative is specifically identified for the purpose of this chapter.

**Vaccination**—the injection, by or under the direct supervision of a licensed veterinarian, of an anti-rabies vaccine approved by the state health officer, in accordance with recommendations of the National Association of State Public

Health Veterinarians, Inc., as per those animals and vaccines specified.

**Veterinarian**—an individual who has graduated from a School or College of Veterinary Medicine that is recognized, accredited and approved by the American Veterinary Medical Association, or who is an individual who has graduated from a foreign veterinary school AND has successfully passed an equivalency examination.

**Licensed Veterinarian**—a veterinarian (as defined in 3:001 of this chapter) who has successfully met the requirements of the Veterinary Practice Act of Louisiana and is legally entitled to practice the profession of veterinary medicine in the State of Louisiana.

**3:002** No person shall own, keep or have in his custody a dog or cat over three months of age that has not been vaccinated against rabies by or under the direct supervision of a licensed veterinarian. Every owner of a dog or cat shall cause said dog or cat to be vaccinated each year thereafter; OR to prove by means of a rabies vaccination certificate signed by a licensed veterinarian that the dog or cat was vaccinated at one year of age or older with a rabies vaccine which, according to the National Association of State Public Health Veterinarians, Inc., confers a three year duration of rabies immunity. The owner shall then be required to revaccinate the dog or cat at least every three years thereafter. No animal other than dogs, cats, cattle, sheep, horses, or other species for which there is a U.S.D.A. approved vaccine for rabies shall be vaccinated against rabies. This section shall not apply to animals held in zoos approved by the American Association of Zoological Parks and Aquariums, or to scientific institutions, or to holders of appropriate and valid Louisiana Department of Wildlife and Fisheries licenses or permits, and/or United States Department of Agriculture licenses.

**3:003** Any owner, keeper or custodian of any dog or cat that bites or otherwise breaks the skin of a human being shall cause said animal to be securely confined to prevent direct contact with other animals, under the direct supervision and control of a licensed veterinarian, or in a facility approved by the state health officer, for a minimum of 10 days following the bite (the day of the bite being counted as day one), or cause said animal to be killed and the head submitted immediately to a laboratory of the Louisiana Department of Health and Hospitals for examination for rabies. Any dog or cat that dies or develops any signs suggestive of rabies during the 10 day observation period shall be reported immediately to the local health authority and provided such signs are compatible with rabies, as determined by a licensed veterinarian, the animal shall be killed and the head submitted to a laboratory of the Louisiana Department of Health and Hospitals for examination for rabies. Any unvaccinated dog or cat inflicting a bite on a human, in addition to the above restrictions, shall be required to be vaccinated against rabies upon being released to its owner.

**3:004** When any unvaccinated animal is exposed to another known rabid animal, the owner shall cause said animal to be destroyed immediately; OR cause any unvaccinated animal exposed to a known or suspected rabid animal to be placed in strict isolation, at the owners expense, under the supervision

of a licensed veterinarian, for a minimum of six months. Rabies vaccination prior to release shall be mandatory for any such animals.

The owner of any vaccinated dog or cat exposed to a known or suspected rabid animal shall cause said dog or cat to be destroyed immediately, OR shall cause such animal to be revaccinated immediately and restrained by confinement under the supervision of a licensed veterinarian, or by confinement satisfactory to the state health officer, for at least 45 days, and shows proof of vaccination against rabies for said dog or cat, to the satisfaction of the local health authority.

Release from confinement of the dog or cat in either situation shall require a release form signed by the supervising veterinarian.

**3:005** Certain animals are inherently dangerous to humans. These may be exotic species, nondomesticated species or hybrids of these species. The danger to public health is due to unpredictable behavior (i.e. potential to bite) and to erratic reaction to rabies vaccine (i.e. failure to protect with parenteral vaccination).

No person shall purchase, sell or keep an animal as a pet that is inherently dangerous to humans. This will include the skunk, fox, raccoon, bobcat, wolf, hybrids of non-domesticated species, and any other non-domesticated animal capable of transmitting rabies. This section shall not apply to municipal zoos approved by the American Association of Zoological Parks and Aquariums or to scientific institutions or to holders of appropriate and valid Department of Wildlife and Fisheries licenses or permits (as per R.S. 56:171 and 56:262.1) and/or United States Department of Agriculture licenses (as per the United States Animal Welfare Act).

**3:006** Bats and wild carnivorous mammals, as well as animals cross-bred with domestic dogs and cats, that bite or otherwise expose people, pets, or livestock, shall be humanely killed and appropriate tissues should be sent to the state health department laboratory for rabies examination. A person bitten by any wild mammal shall report the incident immediately to a physician.

**3:007** The sale of anti-rabies vaccine shall be limited to licensed veterinarians practicing in the state of Louisiana, or to licensed veterinarians employed by the state of Louisiana, or the federal government, in pursuit of their assigned duties within the state of Louisiana. Detailed records of the sale and disposition of anti-rabies vaccine will be maintained by any and all distributors of said vaccine. Such records will include the name and address of the licensed veterinarian to whom the vaccine is sold or distributed, the volume (doses), the manufacturers lot number(s) of the shipment, and the date of sale. These records will be maintained for a period of at least three years and will be provided for inspection on the request of an authorized representative of the state health officer. The licensed veterinarian shall likewise maintain complete records of the use of all anti-rabies vaccine administered on a dose-by-dose basis. Such records shall be maintained for a minimum of three years and shall be made available to an authorized representative of the state health officer.

**3:008** Any person that has knowledge of a failure to follow these regulations and fails to report such violation to the state health officer shall be in violation of these regulations as though he had committed the violations in his own behalf.

Interested persons may submit written comments to: Dr. Louise McFarland, State Epidemiologist, Box 60630, New Orleans, LA 70160. She is the person responsible for responding to inquiries regarding this proposed rule.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Chapter III—Sanitary Code**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated costs/savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated effect on revenues.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
There is no anticipated costs/economic benefits to persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no anticipated effect on competition and employment.

Eric T. Baumgartner, M.D.  
Assistant Secretary

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Sanitary Code—Safe Drinking Water (Chapter XII)**

In accordance with the provisions of the Administrative Procedure Act, the Department of Health and Hospitals, Office of Public Health, Safe Drinking Water Program, proposes to amend Chapter XII (Water Supplies) of the Sanitary Code, state of Louisiana, to incorporate certain regulations which have been promulgated by USEPA under the Safe Drinking Water Act, but have not yet been incorporated into the Sanitary Code. To accomplish this, it is proposed to amend paragraph 12:001 of the Sanitary Code, "Definitions", by adding five additional *Federal Register* references to the list contained in the definition of "national primary drinking water regulations".

These additional *Federal Register* references are proposed to be incorporated into the Sanitary Code in order that Louisiana can maintain its primacy role in implementing all parts of the national primary drinking water regulations pursuant to applicable provisions of P.L. 99-339, the "Safe Drinking Water Act."

These five additional *Federal Register* references deal with monitoring of public water supplies for inorganic chemicals, synthetic organic chemicals, and volatile organic chemicals (all together known as Phase II/V), and for lead and copper (known as the lead and copper rule). Louisiana is already implementing these federal regulations; however, enforcement authority remains with the USEPA until they are incorporated into state law.

Paragraph 12:001 will now read:

**Chapter XII  
Water Supplies**

**12:001 Definitions**

\* \* \*

National primary drinking water regulations are regulations (40 CFR Parts 141 and 142) promulgated by the U.S. Environmental Protection Agency pursuant to applicable provisions of P.L. 99-339, the "Safe Drinking Water Act", and as published in the *Federal Register* of December 24, 1975, pages 59,566 through 59,574; July 9, 1976, pages 28,402 through 28,409; November 29, 1979, pages 68,624 through 68,707; March 11, 1980, pages 15,542 through 15,547; August 27, 1980, pages 57,332 through 57,357; March 12, 1982, pages 10,998 through 10,999; April 2, 1986, pages 11,396 through 11,412; July 8, 1987, pages 25,690 through 25,717; October 28, 1987, pages 41,534 through 41,550; January 30, 1991, pages 3578 through 3597 (Phase II); June 7, 1991, pages 26547 through 26564 (lead and copper rule); July 1, 1991, pages 30274 through 30281 (Phase II B); July 15, 1991, page 32113 (lead and copper rule corrections); June 29, 1992, pages 28745 through 28748 (lead and copper rule corrections); and July 17, 1992, pages 31838 through 31849 (Phase V).

\* \* \*

Copies of the cited *Federal Register* issues which govern these regulations are available for review at Office of Public Health regional offices located in Thibodeaux, New Orleans, Baton Rouge, Lafayette, Lake Charles, Alexandria, Shreveport, and Monroe.

Interested persons may submit written comments on the proposed rules to the following: C. Russell Rader, Chief Engineer, Office of Public Health, Box 60630, New Orleans, LA 70160. Comments must be submitted by March 20, 1994.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Sanitary Code—Safe Drinking Water**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no anticipated additional costs to the state general fund for implementing the proposed changes to the State Sanitary Code. These changes incorporate federal regulations which are already being implemented by OPH under the Safe Drinking Water Program with state general fund monies already authorized; FY '93: \$3,441,246, state; \$1,007,391, EPA grant;

FY '94: \$3,309,135, state; \$1,011,000, EPA grant. Local governmental units will not experience direct costs, but it is possible some water systems (privately-owned and/or public) may require capital expenditures and/or O&M cost increase due to these federal regulations, but this would occur even if the regulations were not incorporated into the Sanitary Code.

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

State or local governmental unit collections are not affected.

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

Since these regulations are already in effect by federal law, there are no additional costs or economic benefits due to adoption in the State Sanitary Code. The entire Safe Drinking Water Act under which auspices these regulations are promulgated is geared toward public health benefits through regulation of public water supplies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Rose V. Forrest  
Secretary

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Health and Hospitals Office of Public Health

#### Sanitary Code—Shellfish (Chapter IX)

The Department of Health and Hospitals, Office of Public Health intends to amend Chapter IX of the Sanitary Code, state of Louisiana, Section 9:004, 9:006, 9:051 and 9:052. The Department of Health and Hospitals, Office of Public Health also intends to amend Chapter IV of the State of Louisiana food, drug and cosmetic regulations. Sections 49:6.1240 and 49:6.2010 shall be amended as follows:

#### Sanitary Code

#### Chapter IX. Seafood

#### 9:004 Transplanting of Shellfish

No person shall engage in the business of transplanting shellfish from waters not approved for direct market harvesting by the state health officer prior to obtaining a permit for that purpose from the Department of Health and Hospitals, Office of Public Health. Growing waters to be utilized for shellfish transplanting purposes must meet or exceed the Department of Health and Hospitals' criteria for a restricted area classification. Applications shall be completed and submitted with a fee of \$50, which shall be paid by cashier's check or money order and filed not less than 14 days prior to the beginning of such proposed transplanting. Transplanting of shellfish shall be permitted only during the first two weeks of each calendar month.

#### 9:004-1

A \$5,000 cash performance bond consisting of a bank

cashier's check made payable to the Department of Health and Hospitals shall be submitted with each completed application. In addition to the bond, a permittee, at his own expense, shall secure the services of a surveillance officer approved by the Department of Health and Hospitals and the Department of Wildlife and Fisheries for the purpose of monitoring all harvesting, transporting and bedding of shellfish for transplanting purposes. In order to satisfy the monitoring requirement, all harvesting, transporting and bedding of shellfish for transplanting purposes shall take place in the direct line of sight of the state-approved surveillance officer.

#### 9:004-2

Permits shall be granted at the discretion of the Department of Health and Hospitals under the following restrictions:

A. No permittee, boat captain or crew member may serve on any vessel subject to this permit who has been cited or found guilty of violations relative to the harvesting of shellfish within three years of the application date; provided, however that said permittee, crew member or boat captain may receive a waiver of this condition with regard to those citations which did not result in a conviction upon the appropriate showing being made to the Department of Wildlife and Fisheries.

B. That shellfish transplanted from restricted waters, as established by the state health officer from sanitary surveys of the area and bacteriological examination of the water, shall remain down in approved waters for the remainder of the permitted month or no less than 15 days. No part of any lease on which shellfish have been transplanted may be utilized for direct market harvesting during the entire active period of the transplant permit.

C. That shellfish harvested for transplanting purposes from restricted waters shall not be laid down within 500 feet of any adjoining lease where shellfish may be taken for sale as food during the active period of the transplant permit.

D. That sacking of shellfish, storage of empty shellfish sacks on board permitted or authorized transplanting vessels and/or the direct marketing of shellfish taken from waters not approved for that purpose by the state health officer shall be strictly prohibited.

E. That culling of shellfish shall be permitted only when container relaying is practiced and written authorization is obtained from the Department of Health and Hospitals.

F. That only two leases in the restricted area and approved bedding area, each preapproved by the Department of Health and Hospitals, shall be utilized in the transplanting of shellfish.

G. That the permittee shall be responsible for notifying the Department of Wildlife and Fisheries prior to leaving port to transplant shellfish and immediately upon returning from permitted trip each day. The Department of Wildlife and Fisheries shall be notified by calling 1-800-442-2511.

H. That all leases shall be "red flagged" so that they may be easily spotted by both aircraft and boats. "Red flagged" as used in this Paragraph, means that the four outside corners of the lease must be marked with poles with red flags attached.

I. That all activities relative to the transplanting of shellfish shall be permitted only during daylight hours with all activities completed no later than 30 minutes after official sunset. Applicants may apply for a written exemption to this



requirement when the distance between the restricted area and bedding area is such that compliance is not possible.

J. That both sides of the permitted vessel shall be marked with the permit number in at least 6-inch high letters on a contrasting background so as to be visible from low flying aircraft or from any other vessel in the immediate vicinity.

K. That a copy of the complete transplant permit and applicable rules shall be on board each authorized vessel at all times during the active period of the transplant permit.

L. That the harvesting of shellfish for transplanting purposes within 150 feet of any sewage discharge point emanating from any camp, home, or other habitable structure shall be prohibited.

#### **9:004-3**

An official Department of Health and Hospitals' "Surveillance Officers Daily Trip Report" must be completed each day by the surveillance officer and mailed to the Department of Health and Hospitals, Seafood Sanitation Unit after each completed day of transplanting.

#### **9:004-4**

Failure to comply with any of the permitting requirements specified in Sections 9:004 through 9:004-3 shall result in the following administrative actions:

A. The transplant permit and all transplant permitting privileges shall be immediately suspended by the Department of Health and Hospitals or the Department of Wildlife and Fisheries.

B. All shellfish harvested for transplanting purposes in violation of permitting requirements shall be returned to the original growing waters or destroyed at a permittee's own expense.

C. If said charges are upheld in an administrative hearing, the following additional penalties shall be imposed:

1. Transplant permitting privileges shall be denied for a period of three years.

2. The \$5,000 cash bond posted by the permittee shall be forfeited and retained by the state.

#### **9:006 Construction and Cleanliness of Shellfish Boats**

All boats utilized for the harvesting or transporting of shellfish shall be provided with a false deck or bottom to prevent the contamination of shellfish with bilge water. For the purpose of this regulation bilge water may be defined as any water that collects in the lowest inner part of a boat's hull. Decks, holds, or bins used for storage of shellfish shall be washed daily with either potable water, or water drawn from an approved growing area. Unless otherwise exempted in writing by the Department of Health and Hospitals, a suspended awning shall be provided on harvest boats to protect shellfish from direct exposure to sun, birds, and other adverse conditions. Small children in diapers, dogs, cats or other forms of wildlife shall not be permitted on board harvesting vessels while shellfish are being fished or transported. Violation of any of the requirements in this Section shall result in one of the following penalties:

A. Shellfish shall be seized and destroyed at violator's expense.

B. Shellfish shall be bedded on a Department of Wildlife and Fisheries managed seed reservation at violator's expense.

#### **9:051 Refrigeration of Shell-Stock Oysters, Clams and Mussels**

Shell-stock shall be placed under mechanical refrigeration at a temperature not to exceed 45°F within three hours after docking of harvesting vessels, and shall be maintained at or below that temperature throughout all levels of commerce. Shell-stock, other than for delivery to an in-state certified shellfish shipper located within 50 miles or one hour of docking area shall be transported in mechanically refrigerated trucks at a temperature not to exceed 45°F. During the time period April 1 through November 30, all shell-stock fishermen without effective on-board mechanical refrigeration capability shall be responsible for having their shell-stock delivered to dockside for unloading no later than 12 midnight each day. The use of ice as a means of refrigerating shell-stock shall be prohibited. If fishermen elect to harvest shell-stock for bedding purposes during the April 1 - November 30 time period, the one-day harvesting requirement may be waived under the following conditions:

A. That the sacking or containerizing of shellfish shall be prohibited during the time period when shell-stock are harvested, transported and bedded.

B. That the storage of empty sacks or other shellfish containers aboard an authorized harvesting vessel shall be prohibited during the time period when shellfish are harvested, transported and bedded. Shell-stock not refrigerated in accordance with the aforementioned requirements shall be deemed adulterated and shall be seized and destroyed, or bedded on a Department of Wildlife and Fisheries managed seed reservation at the violator's expense.

#### **9:052 Checking on Condition of Molluscan Shellfish in Growing Waters Closed by the State Health Officer**

No person shall engage in the business of checking on the condition of molluscan shellfish in growing waters closed by the state health officer prior to obtaining a permit for that purpose from the state health officer. Applications shall be completed and submitted with a fee of \$50, which shall be paid by cashier's check or money order and filed not less than 14 days prior to the beginning of such proposed checking activities. One-day permits shall be granted only during the first two weeks of each calendar month.

##### **9:052-1**

A \$1,000 performance bond consisting of a bank cashier's check or property bond made payable to the Department of Health and Hospitals shall be submitted with each completed application. In addition to the bond, a permittee, at his own expense, shall secure the services of either a bonded security guard from an agency licensed by the state of Louisiana, or a commissioned municipal, parish, or state police officer for the purpose of monitoring all checking activities. In order to satisfy the monitoring requirement, all checking of shellfish in closed waters must take place in the direct line of sight of an agent approved by the Department of Health and Hospitals or the Department of Wildlife and Fisheries.

##### **9:052-2**

Permits shall be granted at the discretion of the Department of Health and Hospitals with the following restrictions:

A. No permittee, boat captain or crew member may serve on any vessel subject to this permit who has been cited or

found guilty of violations relative to the harvesting of shellfish from closed areas within three years of the application date; provided, however that said permittee, crew member or boat captain may receive a waiver of this condition with regard to those citations which did not result in a conviction upon the appropriate showing being made to the Department of Wildlife and Fisheries.

B. That sacking of shellfish and storage of empty shellfish sacks on board permitted or authorized vessel utilized in the checking of shellfish shall be strictly prohibited. No more than one bushel of shellfish may be on board an authorized vessel at any given time.

C. That culling of shellfish shall be strictly prohibited.

D. That only five leases in the closed growing waters shall be utilized in the checking of shellfish.

E. That the permittee shall be responsible for notifying the Department of Wildlife and Fisheries prior to leaving port to check shellfish under permitted conditions and immediately upon returning from permitted trip. The department shall be notified by calling 1-800-442-2511.

F. That all activities relative to the checking of shellfish in closed growing waters shall be permitted only during daylight hours with all activities completed no later than 30 minutes after official sunset.

G. That only one vessel may be utilized and both sides of the permitted vessel shall be marked with the permit number in at least 6-inch high letters on a contrasting background so as to be visible from a low flying aircraft or from any vessel in the immediate vicinity.

H. That a copy of the shellfish checking permit and applicable rules shall be on board the authorized vessel at all times on the active day of permit.

#### 9:052-3

Failure to comply with any of the permitting requirements specified in Sections 9:052 - 9:052-2 shall result in the following administrative actions:

A. The shellfish checking permit and all applicable privileges shall be immediately suspended by the Department of Wildlife and Fisheries or the Department of Health and Hospitals.

B. If said charges are upheld in an administrative hearing, the following additional penalties shall be imposed:

1. Shellfish checking and shellfish transplant permitting privileges shall be denied for a period of three years.

2. The \$1,000 cash or property bond posted by the permittee shall be forfeited and retained by the state.

### Food, Drug and Cosmetic Regulations

#### Chapter 4, Part I

#### Shellfish Depuration Regulations

#### 49:6.1240 Depuration - Harvesting Permit

A. Any person, firm or corporation engaging in the business of harvesting shellfish for depuration purposes from areas not approved by the state health officer for direct market harvesting shall be required to have an unsuspended or unrevoked harvesting-for-depuration permit issued by the Department of Health and Hospitals. Growing waters to be utilized for harvesting purposes must meet or exceed the Department of Health and Hospitals' criteria for restricted area

classification. A fee of \$50 shall be charged for each 30-day permit.

B. Harvesting-for-depuration permits shall be granted only to responsible individuals with no recent history of illegal harvesting violations under the following conditions:

1. No permittee, vessel captain or crew member may serve on any vessel subject to this permit who has been cited or found guilty of violations relative to the harvesting of shellfish within three years of the application date; provided, however that said permittee, crew member or vessel captain may receive a waiver of this condition with regard to those citations which did not result in a conviction upon the appropriate showing being made to the Department of Wildlife and Fisheries.

2. A \$5,000 cash performance bond consisting of a bank cashier's check or money order made payable to the Department of Health and Hospitals shall be posted by each permittee.

3. Harvesting and transporting of shellfish to depuration plants shall be permitted only during daylight hours with all activities completed no later than 30 minutes after official sunset each day.

4. The permittee shall be responsible for notifying the Department of Wildlife and Fisheries prior to leaving port to fish under permitted conditions and immediately upon returning from permitted trip each day. The Department of Wildlife and Fisheries shall be notified by calling 1-800-442-2511.

5. All leases utilized for harvesting-for-depuration purposes shall be "red flagged" so that they may be easily spotted by both aircraft and boat. "Red flagged", as used in this paragraph, means that the four outside corners of a lease must be marked with poles with red flags attached.

6. The sacking of shellfish and the storage of empty shellfish sacks aboard permitted vessels is prohibited.

7. All harvesting and transporting of shellfish for delivery to a depuration plant shall be done in the direct line of sight of a commissioned municipal, parish, or state police officer, or bonded security guard from a state licensed agency. The payment of the surveillance officers salary and expenses shall be the responsibility of the permittee.

8. A maximum of five harvest boats may be included on one permit under the following conditions:

(a). The permittee, vessel captain and crew members shall all be held liable for rule violations.

(b). All vessels must be in direct line of sight of state approved surveillance officer during harvesting and transporting of shellfish to depuration plant.

(c). Each permitted vessel shall have the permit number in at least 6-inch high letters on a contrasting background so as to be visible from low flying aircraft or from any other enforcement vessel in the immediate area.

9. Failure to comply with any of the permitting requirements specified in this Section shall result in the following administrative actions:

(a). The harvesting-for-depuration permit and all permitting privileges shall be immediately suspended by the Department of Wildlife and Fisheries or the Department of Health and Hospitals.

(b). All shellfish harvested-for-depuration purposes shall be returned to the original growing waters at permittee's expense.

(c). If said charges are upheld in an administrative hearing, the following additional penalties shall be imposed:

1. Harvesting-for-depuration and transplant permitting privileges shall be denied for a period of three years.

2. The \$5,000 cash bond posted by the permittee shall be forfeited and retained by the state.

#### Certification Requirements for

#### Resident Shellfish Shippers

#### 49:6.2010 Definitions

(a) *Shellfish*—all edible species of oysters, clams, mussels, and scallops; either shucked or in the shell, fresh or frozen, whole or in part.

(b) *Depuration Processor (DP)*—a person who receives shellstock from a conditionally restricted or restricted growing area and submits such shellstock to a state-approved depuration process.

(c) *Wet Storage Processor (WS)*—a person who receives shellstock from an approved or conditionally approved growing area and submits such shellstock to a state-approved wet storage process.

(d) *Shucker-Packer (SP)*—a person who shucks and packs shellfish. A shucker-packer may act as a shellstock shipper or reshipper or may repack shellfish originating from other certified dealers.

(e) *Repacker (RP)*—a person other than the original certified shucker-packer who repacks shucked shellfish into other containers. A repacker may also repack and ship shellstock. A repacker shall not shuck shellfish.

(f) *Reshipper (RS)*—a person who purchases shucked shellfish or shellstock from other certified shippers and sells the product without repacking or relabeling to other certified shippers, wholesalers, or retailers.

(g) *Shellstock Shipper (SS)*—a person who grows, harvests, buys, or repacks and sells shellstock. They are not authorized to shuck shellfish nor to repack shucked shellfish. A shellstock shipper may also ship shucked shellfish originating from a certified shucker packer and packed in their original container.

(h) *Certified Shellfish Shipper*—any resident shucker-packer, repacker, reshipper, shellstock shipper, depuration processor, or wet storage processor who is certified by the Office of Public Health for inclusion on the U. S. Food and Drug Administration/Public Health Service's Interstate Shellfish Shippers List.

(i) *Critical Deficiency*—a condition or practices which: a) results in the production of a product which is unwholesome; or b) presents a threat to the health or safety of consumers.

(j) *Key Deficiency*—a condition or practice which may result in an adulterated, decomposed, misbranded or unwholesome product.

(k) *Other Deficiency*—a condition or practice that is not in accordance with NSSP Manual requirements but is not key or critical.

#### 49:6.2020 Certification Requirements for Resident Shellfish Shippers

(a) Resident shellfish shippers shall be certified annually and shall file an application for recertification each year with the Office of Public Health. An application for certification shall not be accepted from any individual or corporation previously found guilty within the past five years in a civil or criminal proceeding of knowingly selling shellfish that were harvested from waters not approved for shellfish harvesting by the state health officer. The Office of Public Health shall certify dealers for interstate shipment in accordance with the sanitation and administrative criteria contained in the 1994 edition of the National Shellfish Sanitation Program Manual of Operations, Parts I and II.

(b) All applicants for certification or certification renewal shall undergo a comprehensive on-site inspection prior to being certified. The certification period shall not exceed 12 months. This comprehensive on-site inspection shall be conducted by an Office of Public Health standardized inspector within 30 days of the application for certification or renewal of certification, show the date of the on-site inspection, the inspector's full name and date of expiration of the inspector's standardization.

(c) Only one certification number shall be issued to a dealer per location.

(d) Certification shall be granted only to resident shippers who meet the following inspection requirements: 1) No CRITICAL deficiencies; 2) not more than two KEY item deficiencies; and 3) not more than three OTHER item deficiencies. After a dealer is certified, unannounced inspections using an NSSP approved Office of Public Health inspection form shall be conducted during periods of operation and at such frequency as necessary to assure that adequate operational and sanitary conditions are maintained. A copy of the completed inspection form and a list of observations for items of noncompliance shall be provided to the most responsible individual at the firm.

(e) The minimum frequency of inspection shall be:

- i. within 30 days of beginning operation for any dealer certified on the basis of a preoperational inspection;
- ii. at least monthly for a depuration plant;
- iii. at least quarterly for shucker-packer and repacker;
- iv. at least semi-annually for other certified dealers.

(f) Enforcement actions shall be taken as follows:

i. When a routine inspection detects a CRITICAL deficiency, the deficiency shall be corrected during the inspection or the plant must cease production affected by the deficiency. If the item is not corrected within the specified time, the Office of Public Health shall immediately begin actions to withdraw dealer certification. Further, product affected by the CRITICAL deficiency shall be controlled to prevent contaminated or adulterated product from reaching consumers.

ii. When a routine inspection detects four or more KEY item deficiencies, a follow-up inspection shall be conducted as soon as possible but within 30 days. The follow-up inspection shall determine if the deficiencies have been corrected or are being corrected per the scheduled correction dates noted on the previous inspection report.

iii. When the follow-up inspection of the KEY item deficiencies indicate a failure to comply with the correction schedule, the Office of Public Health shall immediately bring actions to suspend operations and withdraw dealer certification.

iv. When a routine inspection detects OTHER item deficiencies or three or less KEY item deficiencies, the deficiencies shall be corrected prior to the next routine inspection.

v. All specific deficiencies, as noted in the narrative section of the inspection report, which are repeated consecutively and are not corrected as scheduled shall be corrected prior to the annual certification. Dealers which fail to correct such deficiencies shall not be certified.

vi. When inspections are made of certified shellfish shippers where the Office of Public Health finds nonconformities that present an imminent threat to public health, actions shall be initiated immediately by the Office of Public Health to suspend operations and withdraw certification until a reinspection confirms that appropriate corrections have been made. The Office of Public Health shall also seize any undistributed lots of shellfish that may have been adulterated, initiate a recall of shellfish distributed intrastate, and notify FDA and receiving state enforcement agencies of interstate product distributions.

vii. When inspections are made of certified shellfish shippers where the Office of Public Health finds major public health deficiencies, action shall be initiated by the Office of Public Health to suspend or withdraw certification until a reinspection confirms that appropriate corrections have been made.

viii. When a certificate is removed for cause, the Office of Public Health shall immediately notify FDA and shellfish control personnel in known receiving states.

(g) A certified shellfish dealer whose certificate has been removed for cause may not ship shellfish in intrastate or interstate commerce until the Office of Public Health is satisfied that corrections have been made. A recertification shall not be issued until an inspection by the officer of public health establishes that the firm is in substantial compliance with all applicable criteria of the latest edition of the National Shellfish Sanitation Program Manual of Operations, Parts I and II. Upon recertification, the Office of Public Health shall notify FDA and known receiving states immediately. These changes shall become effective April 20, 1994.

Interested persons may submit questions or written comments to the following address: Charles C. Conrad, Administrator, Seafood Sanitation Unit, Box 60630, New Orleans, LA 70160. He is the person responsible for responding to inquiries regarding these proposed rule changes. All questions or comments must be viewed by February 1, 1994.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Shellfish Regulations**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no cost to state or local governmental units in implementing these rule changes.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
There will be no significant costs and/or economic benefits to directly affected groups (shellfish industry).
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There should be no significant effect on competition or employment.

Eric T. Baumgartner, M.D.  
Assistant Secretary

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Disproportionate Share Payment Methodologies  
for Inpatient Hospital Services**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, is proposing to adopt a rule in the Medicaid Program 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 provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Medicaid Program currently reimburses hospitals serving a disproportionate share of low income patients via three pools with payments based on Medicaid days. These pools based on Medicaid days are acute care teaching hospitals, acute care non-teaching hospitals, and distinct part psychiatric units/free-standing psychiatric hospitals. This payment methodology was implemented effective March 1, 1993 by means of emergency rulemaking to ensure compliance with the state cap on disproportionate share payments as a result of Public Law 102-234 and federal regulations published November 24, 1992. A notice of intent was published on April 20, 1993 and a rule was adopted on November 20, 1993, Volume 19, Number 11. In addition, disproportionate share payments for indigent care based on free care days were made by establishment of an additional disproportionate share indigent pool via emergency rulemaking originally adopted on January 1, 1993 and then continued in force through the adoption of subsequent emergency rules published in the April, September, and December 20, 1993 issues of the *Louisiana Register*. A notice of intent on the indigent

payment methodology was published in the April 20, 1993 issue of the *Louisiana Register* and a public hearing was held on May 25, 1993 and on January 25, 1994.

The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) amended Section 1923 (Adjustment in Payments for Inpatient Hospital Services Furnished by Disproportionate Share Hospitals) of the Social Security Act (42 U.S.C. Section 1396r-4) by establishing individual hospital disproportionate share payment limits. Therefore the bureau is restructuring its disproportionate share payment methodology to address a fiscal crisis and to comply with the Health Care Financing Administration's policy on this federal statute. This restructuring incorporates provisions that will: establish pools and specify the qualifying criteria for each pool, limit indigent per diem payments to each hospital's total Medicaid per diem equivalent amount, allow the director of the Bureau of Health Services Financing to adjust original pool amounts within the federal fiscal year, allow the bureau to issue the disproportionate share pool amounts in multiple payments, and establish a reconciliation pool to provide disproportionate share reimbursement to providers qualifying for disproportionate share payments that have either entered the program or have qualified for disproportionate share payments subsequent to the March 31, 1993 pool base.

The proposed rule revises the disproportionate share payment methodologies for Medicaid days and indigent care days and also establishes a reconciliation pool payment methodology; and it is anticipated that these changes will have no impact on aggregate annual disproportionate share expenditures.

The text of this proposed rule can be viewed in its entirety in the emergency rule section of this February, 1994 *Louisiana Register*.

Rose V. Forrest  
Secretary

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

##### RULE TITLE: Disproportionate Share Payment Methodologies

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

There is no estimated cost or cost savings associated with the implementation of this proposed rule since the Medicaid Program will remain under the allowed federal cap for disproportionate share payments for inpatient hospital services.

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

There is no estimated federal revenue increases or decrease associated with the implementation of this proposed rule.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There is no estimated cost to the private hospitals because the reduction of disproportionate share payments are not derived from the hospitals' cost for providing inpatient services. There are statewide economic benefits associated with the use of this payment reduction for state match for the Medicaid Program.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director

David W. Hood  
Senior Fiscal Analyst

### NOTICE OF INTENT

#### Department of Social Services Louisiana Rehabilitation Services

##### Independent Living Program (LAC 67:VII.1501)

In accordance with the provisions of R.S. 49:953(B), the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services is adopting revisions to its Independent Living (IL) policy manual.

The purpose of this proposed rule is to provide federally mandated revisions to the rules governing the policy used by Louisiana Rehabilitation Services in implementing its IL program.

This proposed rule supersedes all rules previously promulgated related to Louisiana Rehabilitation Services' IL policy manual.

IL policy has thus far been superficially incorporated into Louisiana Rehabilitation Services' general policy manual. It is now Louisiana Rehabilitation Services' intention to isolate IL policy into its own manual because of increasing expansion and complexity of the program.

#### Title 67

#### SOCIAL SERVICES

#### Part VII. Louisiana Rehabilitation Services

#### Chapter 15. Louisiana Rehabilitation Services

#### Independent Living Program Policy

#### §1501. Louisiana Rehabilitation Services Independent Living (IL) Program Policy Manual

Policy Manual. IL policy manual fiscal year 1994 provides to eligible individuals with disabilities opportunities for independent living outcomes.

**AUTHORITY NOTE:** Promulgated in accordance with the Rehabilitation Act of 1973, as amended, R.S. 49:664 Section 6B, R.S. 36:477 (c), R.S. 46:331-335, R.S. 39:1595.3 and R.S. 39:1594 (I).

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Louisiana Rehabilitation Services, LR 17:891 (Sept 1991), amended LR 20:

Public hearings beginning at 10 a.m. will be held on, March 28, 29, and 30, 1994, in Shreveport, Alexandria, and New Orleans, respectively. The hearing locations are as follows: Shreveport at 1525 Fairfield Avenue; Alexandria at 900 Murray Street; and New Orleans at 2026 St. Charles Avenue.

All interested persons will be afforded an opportunity to express issues, views or concerns at the hearings. Written commentary will be also be accepted by Louisiana Rehabilitation Services prior to the hearings, during the hearings, and up through April 13, 1994. The written comments should be submitted to May Nelson, Director,

Rehabilitation Services, Box 94371, Baton Rouge, LA 70804-9371.

Copies of the entire text of the proposed policy manual can be obtained from Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802, at the Rehabilitation Services headquarters, 8225 Florida Boulevard, Baton Rouge, LA, and at each of its nine regional offices.

Gloria Bryant-Banks  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Independent Living Program  
(LAC 67:VII.1501)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no anticipated implementation costs or savings.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Louisiana Rehabilitation Services has sufficient funds to provide client services and administer the program as Act 14 was approved by the Louisiana Legislature.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)  
Louisiana Rehabilitation Services has \$226,872 of federal funds and \$25,208 of state general funds to provide services to an estimated 255 eligible individuals with severe disabilities on a first come first serve basis.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no proposed change in competition and employment in the public and private sectors.

May Nelson  
Director

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Caney Creek Reservoir Bass  
(LAC 76:VII.149)**

The Louisiana Wildlife and Fisheries Commission hereby advertises its intent to change the classification of Caney Creek Reservoir from a "quality" lake to a "trophy" black bass lake.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 1. Freshwater Sports and Commercial Fishing**

**§149. Black Bass Regulations—Daily Take and Size Limits**

A. The Wildlife and Fisheries Commission establishes a statewide daily take (creel limit) of 10 fish for black bass

(*Micropterus spp.*). The possession limit shall be the same as the daily take on water and twice the daily take off water.

B. In addition, the commission establishes special size and daily take regulations for black bass on the following waterbodies:

1. Concordia Lake (Concordia Parish), False River (Pointe Coupee Parish) and Caney Creek Reservoir (Jackson Parish):

a. Size Limit: 15 inch - 19 inch slot. A 15 - 19 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 15 inches and 19 inches, both measurements inclusive.

b. Daily Take: Eight fish of which no more than two fish may exceed 19 inches maximum total length.\*

c. Possession Limit:

i. On water—same as daily take.

ii. Off water—twice the daily take.

2. Lake Bartholomew (Morehouse and Ouachita parishes), Black Bayou Lake (Bossier Parish), Chicot Lake (Evangeline Parish), Cross Lake (Caddo Parish), Lake Rodemacher (Rapides Parish) and Vernon Lake (Vernon Parish):

a. Size Limit: 14 inch - 17 inch slot. A 14 - 17 inch slot limit means that it is illegal to keep or possess a black bass whose maximum total length is between 14 inches and 17 inches, both measurements inclusive.

b. Daily Take: Eight fish of which no more than four fish may exceed 17 inches maximum total length.\*

c. Possession Limit:

i. On water—same as daily take.

ii. Off water—twice the daily take.

\* *Maximum Total Length*—the distance in a straight line from the tip of the snout to the most posterior point of the depressed caudal fin as measured with mouth closed on a flat surface.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6 (25)(a), 325 (C), 326.3

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 14:364 (June 1988), amended LR 17:278 (March 1991), repromulgated LR 17:489 (May 1991), amended LR 17:1122 (November 1991), LR 20:

Interested persons may submit written comments on the proposed rule to Bennie Fontenot, Administrator, Inland Fish Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Tuesday, April 5, 1994.

John F. "Jeff" Schneider  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Caney Creek Reservoir Bass Regulations**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
The proposed amendment to the rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
The proposed amendment to the rule 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 NON-GOVERNMENTAL GROUPS (Summary)**  
The proposed amendment to the rule should result in an increased fishery to Caney Creek Reservoir with special regulations, resulting in increased fishing-related expenditures at marinas and other establishments. Increased visits from both in-state and out-of-state fishermen are anticipated. Increased employment in areas adjacent to Caney Creek Reservoir is expected as a result of the proposed amendment to the rule.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**  
Needs, services, materials and equipment commensurate with an expanded fisheries will boost employment and have both a direct and indirect economic benefit to the state.

Frederick J. Prejean, Sr.  
Assistant Secretary

John R. Rombach  
Legislative Fiscal Officer

# POTPOURRI

## POTPOURRI

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Horticulture Commission**

### Floristry Examinations

The next retail floristry examinations will be given April 25-29, 1994 at 9:30 a.m. at the 4-H Mini Farm Building, LSU Campus, Baton Rouge, LA. The deadline for sending application and fee is March 28, 1994 at 4:30 p.m. No applications will be accepted after March 28, 1994.

Further information pertaining to the examinations may be obtained from Craig M. Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, phone (504) 925-7772.

Bob Odom  
Commissioner

## POTPOURRI

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Horticulture Commission**

### Landscape Architect Examination

The next Landscape Architect Registration Examination will be given at the College of Design Building on the LSU campus, located near the intersection of Fieldhouse Drive and South Campus Drive, Baton Rouge, LA. The deadline for getting in application and fee is as follows:

|                        |                |
|------------------------|----------------|
| New Candidates         | March 1, 1994  |
| Re-take Candidates     | March 15, 1994 |
| Reciprocity Candidates | May 31, 1994   |

All applications and fees must be in the Horticulture Commission office no later than 4:30 p.m. on the deadline date. The test dates will be June 13, 14, and 15, 1994.

Further information concerning examinations may be obtained from Craig M. Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, phone (504) 925-7772.

Bob Odom  
Commissioner

## POTPOURRI

**Department of Environmental Quality  
Office of the Secretary**

### Environmental Equity

Under the authority of the Louisiana Environmental Quality Act, particularly R.S. 30:2011D.(5), the Department of Environmental Quality will conduct a public fact-finding hearing. The purpose of this hearing is to investigate issues concerning environmental equity/justice in the administration of department programs with respect to resident populations who do not have the economic resources to participate in the environmental decision making affecting their area.

The public hearing will be held on Saturday, March 19, 1994 at 10 a.m., in the Southern University School of Nursing Auditorium on Swan Street in Baton Rouge. Interested persons are invited to attend and submit oral comments. Should individuals with a disability need special accommodations in order to participate please contact Frederick J. Barrow at the address given below or at (504) 765-0741.

All interested persons are also invited to submit written comments. Such comments should be submitted to Frank Alexis, Office of the Secretary, Box 82263, Baton Rouge, LA, 70884-2263 or 7290 Bluebonnet Boulevard, Sixth Floor, Baton Rouge, LA, 70810 or by FAX number (504) 765-0746. Comments will be accepted by this office until March 31, 1994.

William A. Kucharski  
Secretary

POTPOURRI

Department of Health and Hospitals  
Board of Embalmers and Funeral Directors

Examinations

The Board of Embalmers and Funeral Directors will give the National Board Funeral Director and Embalmer/Funeral Director exams on Saturday, March 12, 1994 at Delgado Community College, 615 City Park Ave., New Orleans.

Interested persons may obtain further information from the Board of Embalmers and Funeral Directors, Box 8757, Metairie, LA 70011, (504) 838-5109.

Dawn Scardino  
Executive Director

POTPOURRI

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

Narcotics and Controlled Substances

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is transferring the narcotic, Levo-alphaacetylmethadol (LAAM) from Schedule I to Schedule II of Chapter 39 "Narcotics and Controlled Substances" Section 3942 in accordance with the reclassification of this substance by the Drug Enforcement Administration (DEA). The DEA's reclassification was published in the *Federal Register*, Volume 58, No. 158, Wednesday, August 18, 1993 (pages 43795 43797) and amended Part 21 of the Code of Federal Regulations, Section 1308.11 Schedule I by the deletion of the above substance and revised Section 1308.12 Schedule II with the addition of this substance.

In accordance with the provisions and licensing authority granted to the Department of Health and Hospitals contained in R.S. 40:961-1036 and R.S. 46:51; the department adopted LAC 48:I.Chapter 39, "Controlled Dangerous Substances" on October 20, 1992, as published in the *Louisiana Register* Volume 18, Number 10, page 1132 to regulate narcotics and dangerous substances in Louisiana.

Therefore under Part 21 of the Code of Federal Regulation, Section 1308.12 and the LAC 48:I.Chapter 39, the regulatory controls of Schedule II will be applicable to the manufacture, distribution, importation and exportation of LAAM.

Rose V. Forrest  
Secretary

POTPOURRI

Department of Natural Resources  
Office of the Secretary  
Fishermen's Gear Compensation Fund

December 1993 Claims

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 138 claims in the amount of \$405,796.06 were received in the month of December 1993. Fourteen claims in the amount of \$41,564.09 were paid and five claims were denied.

Loran coordinates of reported underwater obstructions are:

|       |       |                    |
|-------|-------|--------------------|
| 27396 | 46925 | Vermilion          |
| 27924 | 46852 | Terrebonne         |
| 28392 | 46912 | Lafourche          |
| 28148 | 46827 | Terrebonne         |
| 28586 | 46907 | Jefferson          |
| 28586 | 46907 | Jefferson          |
| 26699 | 46977 | Cameron            |
| 26823 | 46972 | Cameron            |
| 27307 | 46913 | Vermilion          |
| 26699 | 46977 | Cameron            |
| 27331 | 46948 | Vermilion          |
| 28627 | 46867 | Plaquemines        |
| 27551 | 46816 | Iberia             |
| 26810 | 46977 | Cameron            |
| 26803 | 46976 | Cameron            |
| 28092 | 46835 | Terrebonne         |
| 28042 | 46832 | Terrebonne         |
| 26620 | 46972 | Cameron            |
| 26620 | 46972 | Cameron            |
| 28102 | 46853 | Terrebonne         |
| 28922 | 46886 | Plaquemines        |
| 26620 | 46972 | Cameron            |
| 28718 | 47033 | Lake Pontchartrain |
| 27914 | 46856 | Terrebonne         |
| 26699 | 46977 | Cameron            |
| 28320 | 46826 | Lafourche          |
| 26620 | 46972 | Cameron            |
| 47890 | 46860 | Terrebonne         |
| 27896 | 46859 | Terrebonne         |
| 28598 | 46861 | Plaquemines        |
| 26620 | 46972 | Cameron            |
| 28591 | 46870 | Jefferson          |
| 29126 | 46915 | Plaquemines        |
| 26661 | 46978 | Cameron            |
| 27983 | 47825 | Terrebonne         |
| 26913 | 46957 | Cameron            |

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

John F. Ales  
Secretary



**POTPOURRI**

**Department of Natural Resources  
Office of the Secretary  
Fishermen's Gear Compensation Fund**

**January 1994 Claims**

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 72 claims in the amount of \$213,852.82 were received in the month of January 1994. Fifteen claims in the amount of \$46,214.39 were paid and one claim was denied.

Loran coordinates of reported underwater obstructions are:

|       |       |             |
|-------|-------|-------------|
| 46837 | 28082 | Terrebonne  |
| 28037 | 46856 | Lafourche   |
| 27019 | 46952 | Cameron     |
| 46934 | 27652 | Vermilion   |
| 27515 | 46980 | Iberia      |
| 27890 | 46858 | Terrebonne  |
| 26893 | 46966 | Cameron     |
| 28829 | 47050 | Orleans     |
| 27598 | 46923 | St. Mary    |
| 27724 | 46888 | Terrebonne  |
| 26765 | 46980 | Cameron     |
| 26765 | 46980 | Cameron     |
| 29171 | 89462 | Plaquemines |
| 28640 | 46870 | Plaquemines |
| 27743 | 46879 | Terrebonne  |
| 27019 | 46952 | Iberia      |
| 28253 | 46816 | Terrebonne  |
| 29095 | 90381 | Terrebonne  |

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

John F. Ales  
Secretary

**POTPOURRI**

**Department of Social Services  
Office of Community Services**

**Homeless Shelter Grants**

The Department of Social Services (DSS) announces the availability of \$1,202,000 in grant funds for distribution to applicant units of local government under the 1994 State Emergency Shelter Grants Program (ESGP). Program funds are allocated to the state by the U.S. Department of Housing and Urban Development (HUD) through authorization by subtitle B of Title IV of the Stewart B. McKinney Homeless Assistance Act, as amended. Funding available under the Emergency Shelter Grants Program is dedicated for the rehabilitation, renovation or conversion of buildings for use as

emergency shelters for the homeless, and for payment of certain operating costs and social services expenses in connection with emergency shelter for the homeless. The program also allows use of funding in homeless prevention activities as an adjunct to other eligible activities.

As specified under current state ESGP policies, eligible applicants are limited to units of general local government (parishes and cities) for jurisdictions with a minimum 28,000 population according to recent census figures. Recipient units of local government may make all or part of grant amounts available to private nonprofit organizations for use in eligible activities. To be eligible for funding participation, a private nonprofit organization as defined by ESGP regulations must be one which is exempt from taxation under subtitle A of the Internal Revenue Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance.

Application packages for the state ESG program shall be issued by mail to the chief elected official of those qualifying units of general local government for jurisdictions containing the required 28,000 minimum population. In order to be considered for funding, applications must be received by DSS/Office of Community Services by the close of business, 4:30 p.m., Friday, April 22, 1994.

DSS will continue use of a geographic allocation formula (initially implemented for the 1992 State ESG Program) in the distribution of the state's ESG funding to ensure that each region of the state is allotted a specified minimum of state ESG grant assistance for eligible ESGP projects. Regional allocations for the state's 1994 ESG program have been formulated based on factors for low income populations in the parishes of each region according to recent U.S. Census Bureau data. Within each region, grant distribution shall be conducted through a competitive grant award process.

The following table lists the allocation factors and amounts for each region:

|                | <b>Factor</b> | <b>Allocation</b> |
|----------------|---------------|-------------------|
| New Orleans    | .1572303      | \$ 188,991        |
| Other Reg. I   | .1011911      | <u>121,632</u>    |
| Parishes       |               |                   |
| Region I total | .2584214      | 310,623           |
| Region II      | .1664908      | 200,122           |
| Region III     | .0698830      | 83,999            |
| Region IV      | .1522066      | 182,952           |
| Region V       | .0531705      | 63,911            |
| Region VI      | .0764176      | 91,854            |
| Region VII     | .1344382      | 161,595           |
| Region VIII    | .0889719      | 106,944           |

Regional funding amounts for which applications are not received shall be subject to statewide competitive award to applicants from other regions and/or shall be reallocated among other regions in accordance with formulations consistent with the above factors. Should an eligible local government wish to apply for supplemental funds above the applicable maximum amount specified below, a separate second stage proposal may be submitted for consideration of award of funds remaining from grant distribution to other regions.

Grant awards shall be for a minimum of \$30,000.

Applicable grant maximums for first stage applications are as follows:

Individual grant awards to applicant jurisdictions of less than 49,000 population shall not exceed \$70,000.

For a jurisdiction of over 49,000 population, the maximum grant award shall not exceed the ESGP allocation for that jurisdiction's respective region.

A jurisdiction applying for grant funding through primary and second stage applications may receive up to the following maximum award:

An applicant jurisdiction of less than 49,000 population may be awarded total grant amounts not to exceed \$110,000.

An applicant jurisdiction of over 49,000 population may be awarded total grant amounts not to exceed \$225,000.

The jurisdiction with the largest homeless population may be awarded grant funding up to \$300,000.

Grant specifications, minimum and maximum awards may be revised at DSS's discretion in consideration of individual applicant's needs, total program funding requests, and available funding. DSS reserves the right to negotiate the final grant amounts, component projects, and local match with all applicants to ensure judicious use of program funds.

Program applications must meet state ESGP requirements and must demonstrate the means to assure compliance if the proposal is selected for funding. If, in the determination of DSS, an application fails to meet program purposes and standards, even if such application is the only eligible proposal submitted from a region or subregion, such application may be rejected *in toto*, or the proposed project(s) may be subject to alterations as deemed necessary by DSS to meet appropriate program standards.

The following are the priorities and objectives for ESGP program funding as set forth in the State Comprehensive Housing Affordability Strategy (CHAS).

**Priority:** To increase the availability of longer term shelter and supportive services for homeless families with children to afford stable, decent and secure living environments and facilitation of movement to transitional or permanent housing arrangements.

**Objective:** To provide assistance for projects to expand capacity to serve 25 homeless families with longer term shelter and supportive services.

**Priority:** Increase in capacity of shelter programs with strong supportive service components or programs linking and coordinating shelter with available service resources to aid homeless persons.

**Objective:** To provide assistance for projects which include substance abuse recovery components, and/or case managed supportive services for special needs populations, to increase availability of such service enriched shelter programs by 50 persons.

Award of grant amounts between competing applicants will be based upon the following selection criteria:

Nature and extent of unmet need for emergency shelter in the applicant's jurisdiction—40 points.

The extent to which proposed activities will address needs for shelter and assistance—30 points.

The ability of the applicant to carry out the

proposed activities promptly—15 points.

Coordination of the proposed project(s) with available community resources, so as to be able to match the needs of homeless persons with appropriate supportive services and assistance —15 points.

Successful applicants shall be required to provide matching funds in an amount at least equal to its ESGP grant amount except for those grant amounts awarded from the first \$100,000 of the state's allocation. With respect to this first \$100,000 which under statutory provisions is free from matching funds requirements, DSS will pass on this benefit to the recipient local government(s), and/or subrecipient(s), which shall be determined by DSS to have the least capability to provide the required matching funds based on information submitted in grant applications or obtained from subsequent program evaluations. For those grant amounts which remain subject to matching funds requirements, the value of donated materials and buildings, voluntary activities and other in-kind contributions may be included with "hard cash" amounts in the calculation of matching funds. A local government grantee may comply with this requirement by providing the matching funds itself, or through provision by nonprofit recipients.

A recipient local government may at its option elect to use up to 2.629 percent of grant funding for costs directly related to administering grant assistance, or may allocate all grant amounts for eligible program activities. Program rules do not allow the use of ESGP funds for administrative costs of nonprofit subgrantees.

Under federal statutory provisions, ESGP recipients are required to involve, to the maximum extent practicable, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under the ESGP program, and in providing services for occupants of these facilities.

Availability of ESGP funding is subject to HUD's approval of the state's ESGP application for fiscal year 1994. No expenditure authority or funding obligations shall be implied based on the information in this notice of funds availability.

Inquiries and comments regarding the 1994 Louisiana Emergency Shelter Grants Program may be submitted in writing to the Office of Community Services, Division of Community Services Grants Management, Box 3318, Baton Rouge, LA 70821, or telephone (504) 342-2277.

Gloria Bryant-Banks  
Secretary

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