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Executive Orders

EXECUTIVE ORDER BR 91- 26

WHEREAS, Executive Order (the "Executive Order") was executed by the governor of the state of Louisiana (the "governor") on September 1, 1988 pursuant to the provisions of the Tax Reform Act of 1986 (the "Act") and provides for the allocation of bonds subject to the private activity bond volume limits of the Act for the calendar year ending December 31, 1991 (the "Ceiling"); and

WHEREAS, Section 4.14 of the Executive Order provides that if the Ceiling exceeds the aggregate amount of bonds during any year by all issuers, the governor may allocate such excess to issuers for one or more carryforward projects permitted under the Act through the issuance of an executive order; and

WHEREAS, there remains, as of the date hereof $115,369,100 of the Ceiling which was not used for projects in the calendar year ending December 31, 1991; and

WHEREAS, the governor desires to allocate all of the excess unused Ceiling to certain projects which are eligible for a carryforward under the Act:

NOW, THEREFORE, I, BUDDY ROEMER, Governor of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, and in accordance with the request for carryforwards filed by the issuing authorities listed below, there is hereby allocated to said issuing authorities the following amounts of excess unused private activity volume limit under the Ceiling for the following carryforward projects:

ISSUER	CARRYFORWARD PROJECT	CARRYFORWARD AMOUNT
Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bonds	$22,000,000
Parish of Jefferson Home Mortgage Authority	Single Family Mortgage Revenue Bonds	$30,000,000
New Orleans Home Mortgage Authority	Single Family Mortgage Revenue Bonds	$15,200,000
East Baton Rouge Parish Home Mortgage	Single Family Mortgage Revenue Bonds	$40,000,000
Louisiana Public Facilities Authority	Student Loan Bonds	$8,169,100

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 20th day of December, 1991.

Buddy Roemer
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

EXECUTIVE ORDER BR 91 - 27

WHEREAS, Act 444 of 1989 created the Louisiana Health Care Authority to develop a comprehensive plan to address the need for changes in the organization and governance of the state's charity hospital system in order to address the system's deficiencies and maintain and enhance the quality of health care to the indigent and uninsured citizens of Louisiana.

WHEREAS, Act 855 of 1990 created a governing board for the Louisiana Health Care Authority and local boards for each of the hospitals in the charity hospital system and provided for the eventual transfer of the charity hospital system from the Department of Health and Hospitals to the Louisiana Health Care Authority subject to additional strategic planning by the Louisiana Health Care Authority governing board and the local boards.

WHEREAS, the governing board of the Louisiana Health Care Authority, in consultation with the local boards of each of the state's charity hospitals, developed a strategic five-year operational plan and presented it to the legislature on March 15, 1991 as required by Act 855 of 1990.

WHEREAS, Act 390 of 1991 adopted the strategic five-year operational plan proposed by the Louisiana Health Care Authority and further provided for the abolition of the office of hospitals and the office of Charity Hospital of Louisiana at New Orleans in the Department of Health and Hospitals and the transfer of the state charity hospital system from the Department of Health and Hospitals to the Louisiana Health Care Authority by executive order of the governor on or before January 1, 1992.

NOW THEREFORE I, BUDDY ROEMER, Governor of the State of Louisiana, do hereby order and direct that:

SECTION 1: All functions, duties and responsibilities of the office of hospitals [except those relative to Villa Feliciana Chronic Disease Hospital and Rehabilitation Center, New Orleans Home and Rehabilitation Center and the Emergency Medical Services Program], the office of Charity Hospital of Louisiana at New Orleans, and the following hospitals:

1. Medical Center of Louisiana at New Orleans (formerly Charity Hospital of Louisiana at New Orleans);
2. Earl K. Long Medical Center in Baton Rouge (formerly Earl K. Long Memorial Hospital);
3. Huey P. Long Medical Center in Pineville (formerly Huey P. Long Memorial Hospital);
4. E. A. Conway Medical Center in Monroe (formerly E. A. Conway Memorial Hospital);
5. University Medical Center in Lafayette;
6. South Louisiana Medical Center in Houma;
7. Lallie Kemp Regional Medical Center in Independence;
8. Washington-St. Tammany Regional Medical Center in Bogalusa; and
9. W. O. Moss Regional Medical Center in Lake Charles are hereby transferred from the Department of Health and Hospitals to the Louisiana Health Care Authority. All positions, personnel, funds, office space, facilities, equipment, books, papers, records, money, actions and other property of every kind, movable or immovable, real and personal heretofore possessed, controlled, or used by office of hospitals, the office of Charity Hospital of Louisiana at New Orleans and the above listed hospitals are hereby transferred to the Louisiana Health Care Authority.

SECTION 2: Villa Feliciana Chronic Disease Hospital and Rehabilitation Center, New Orleans Home and Rehabilitation Center and all functions, duties and responsibilities of those facilities are transferred from the office of hospitals to the office of human services in the Department of Health and Hospitals. All positions, personnel, funds, office space, facilities, equipment, books, papers, records, actions, and other property heretofore possessed, movable or immovable, real and personal heretofore possessed, controlled or used by Villa Feliciana Chronic Disease Hospital and Rehabilitation Center and New Orleans Home and Rehabilitation Center are transferred from the office of hospitals to the office of human services in the Department of Health and Hospitals.

SECTION 3: The Emergency Medical Services program and all functions, duties and responsibilities of that program are transferred from the office of hospitals to the office of public health in the Department of Health and Hospitals. All positions, personnel, funds, facilities, equipment, books, papers, records, actions, and other property of every kind, movable or immovable, real and personal heretofore possessed, controlled or used by the Emergency Medical Services program are transferred from the office of hospitals to the office of public health in the Department of Health and Hospitals.

SECTION 4: The office of hospitals and the office of Charity Hospital of Louisiana at New Orleans in the Department of Health and Hospitals are hereby abolished.

SECTION 5: The support functions formerly provided to the office of hospitals at the office of Charity Hospital of Louisiana at New Orleans and the hospitals listed in Section 1 by the office of the secretary and the office of management and finance in the Department of Health and Hospitals will continue to be provided to those facilities and the Louisiana Health Care Authority in accordance with a memorandum of understanding until June 30, 1992, said memorandum of understanding to be entered into between the Louisiana Health Care Authority and the Department of Health and Hospitals prior to January 1, 1992.

SECTION 6: Nothing herewith shall prevent the secretary of the Department of Health and Hospitals and the chief executive officer of the Louisiana Health Care Authority from amending the memorandum of understanding to the extent authorized by law or Civil Service rules.

SECTION 7: This order shall supercede and rescind all prior executive orders not consistent herewith.

SECTION 8: This order shall be effective on January 1, 1992.

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 31st day of December, 1991.

Buddy Roemer
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

EXECUTIVE ORDER BR 92 -1

WHEREAS, during 1990 and 1991, the Department of Environmental Quality (DEQ) undertook a comparative risk evaluation initiative to identify the environmental issues that pose the greatest risk to Louisiana citizens' health and quality of life, as well as this state's ecosystems; known as the Louisiana Environmental Action Plan or LEAP to 2000 Project, and

WHEREAS, this project has been conducted in a precedent setting, collaborative fashion, designed to build a broad-based consensus to identify and help resolve Louisiana's environmental issues, and

WHEREAS, in conducting this project, the DEQ invited 11 other departments to participate in both the Project Technical and Steering Committees (TSC), and these departments actively participated, and

WHEREAS, the TSC performed a thorough review of the most recent and relevant scientific information, and

WHEREAS, a Public Advisory Committee (PAC) was also organized, consisting of representatives of the full range of constituencies impacted by decisions made on environmental matters in Louisiana. Business and industry (including chemical, oil and gas, pulp and paper and waste management), local and national environmental groups, civic and labor organizations, local and federal government agencies and private citizens were represented on this PAC, and

WHEREAS, the Public Advisory and Steering Committees (PASC) have studied the work of the TSC, prepared a list of Louisiana's environmental problems, ranked in order of priority, and

WHEREAS, representatives of the PASC have met jointly and developed a positive working relationship, and

WHEREAS, the PASC has worked cooperatively to review and ratify the LEAP to 2000 Project Report, that includes: a vision statement describing their environmental goals for Louisiana for the year 2000; a prioritized ranking of Louisiana's most pressing environmental issues; a summary of perceived obstacles to reducing risks to the environment; and, themes to guide the implementation of LEAP, and,

WHEREAS, in order to complete the LEAP to 2000 Project, it is appropriate and necessary that the existence of the Public Advisory Committee be perpetuated to enable citizens from the full range of interests to participate in the implementation of the action strategies, and to ensure that the state departments who have been involved in this project continue the spirit of collaboration, and to assist the departments in developing and adopting long-term action plans which respond to the high prioriy issues the committees identified.

NOW, THEREFORE, I, BUDDY ROEMER, Governor of the State of Louisiana, do hereby order and direct that the Public Advisory Committee (PAC) already established under the LEAP to 2000 Project be officially recognized and authorized to carry out the duties and responsibilities listed below.

SECTION 1: Structure and Membership of the Committee

A. The PAC's first task under this order will be to appoint two co-chairs, who will schedule and facilitate meetings. The PAC's second task will be to select a smaller and representative coordinating group, whose responsibility it shall be to continue the cooperative's collaborative spirit which has characterized this group's interactions to date.

The PAC will select individuals to serve on this coordinating group based on ability that individuals have demonstrated in prior meetings to work in a constructive, conciliatory manner and to ensure a fair exchange of information.

B. The coordinating group's goal will be to continue improving relationships among PAC members and the interest groups they represent, to enhance the trust between them they have already established, and to enable the PAC to continue its work using a consensual decision-making process. To achieve this goal, the first task of the coordinating group will be to convene the PAC to develop a set of ground rules by which the PAC will function.

C. The coordinating group will be responsible for the basic functions needed to carry out the work of the PAC, including scheduling of meetings, working with project support staff to prepare project reports, and in consultation with the PAC, replacement of any member or constituency who can no longer participate.

D. The PAC already formed under the project consists of representatives from: 3 parish governments, 5 representatives of the chemical industry, the oil and gas industry, the waste management industry, the paper industry, 2 civic organizations, a medical professional, a professor, the U. S. Minerals Management Service, the U. S. Soil Conservation Service, the Louisiana Cooperative Extension Service, 6 local environmental groups, 4 state environmental groups, a state sporting organization, a national environmental group, a labor/union organization, and 3 citizens.

E. Each existing member of the PAC will have the opportunity to decide whether they are interested in continuing to participate. If so, these individuals will be given preference to represent their constituency. The PAC coordinating group will review the PAC make-up after individuals have decided whether to continue their participation. The coordinating group will determine whether the PAC needs additional members to maintain its geographic representativeness, diversity and balance. If so, the coordinating group will work with the PAC and LEAP support personnel to identify potential replacements.

F. In addition to the existing membership, the following state officials are requested to appoint key staff members as liaisons and observers to work with the PAC:

President of the Senate;

Chair of the Standing Senate Committee on Natural Resources;

Chair of the Standing Senate Committee on Environmental Quality;

Speaker of the House of Representatives;

Chair of the Standing House Committee on Natural Resources.

The PAC may, at its discretion, request that additional state officials appoint liaisons to help complete its work. The participation of these liaisons will help ensure that LEAP initiatives requiring legislative support are understood and carried forward.

SECTION 2: Duties and Responsibilities of the Committee

A. The PAC will identify a Subcommittee of itself to work with LEAP staff to review the action strategies developed for state departments to consider in reducing risk associated with the high priority issues which the LEAP Project has identified and ranked. These strategies will be compiled into the Action Strategies Supplement (''Supplement'') to the LEAP to 2000 Project Report.

B. PAC members will present the supplement to their constituencies, explaining its purpose and the context of its development. The PAC will also help to identify additional parties to receive the supplement.

C. The supplement will be distributed to state departments for their evaluation and comment. In order for the PAC to assist state government in carrying out initiatives associated with the LEAP to 2000, state departments need to continue to inform the PAC about their ongoing activities. Therefore, within 90 days of receipt of the supplement, each department will provide responses to the PAC. The PAC will review each department's response.

D. The PAC, in collaboration with the state departments involved, will select specific policy options from the supplement and from each state department response. Next, the PAC and departments will also identify appropriate vehicles for implementation. These may include, but are not limited to, recommendations for legislation or guidelines, memoranda of understanding, interagency agreements, recommendations for additional departmental budget appropriations, and recommendations for reallocation of existing budget appropriations. These recommendations for implementation will be compiled into the LEAP to 2000 Implementation Report, which will be presented to the governor's office by June 30, 1992.

E. The Implementation Report will also contain the procedures to monitor progress of initiatives associated with the LEAP to 2000.

SECTION 3: Authorities of the Committee

In carrying out its duties and responsibilities, this committee has the following authorities:

A. to continue to schedule and hold public hearings;

B. to obtain testimony from all involved parties, particularly state, regional and local government employees;

C. to convene meetings with state department heads or their designees and support staff.

SECTION 4: Responsibilities of the Executive Departments

The state departments under my direct authority will continue to work in this cooperative effort with the PAC in preparing the LEAP to 2000 Implementation Report. This includes: Economic Development, Education, Environmental Quality, Health and Hospitals, Natural Resources, Transportation and Development, Wildlife and Fisheries, Public Safety and Corrections and the Division of Administration. Departments will review and respond to the Action Strategies Supplement sent to them by the PAC, within 90 days of receipt of such documents. Department secretaries will make staff available to work on this effort as required and as requested of the secretaries by the PAC. State department secretaries, or their designees, shall meet with the PAC, so PAC members gain an understanding of each department's abilities and limitations.

SECTION 5. Invitation to State Administrators and Commissioners

The attorney general, the commissioner of agriculture and the lieutenant governor are invited and encouraged to continue the participation of their departments on the Project Steering Committee. The success of this project to date has largely been due to its collaborative and inclusive nature. The continued participation of these departments is critical to the project's success.

SECTION 6. Responsibility for Staffing and Budget

The DEQ shall be responsible for coordinating the first PAC meeting following this order and will provide assistance as requested by the PAC. The departments working on initiatives related to this project shall provide staff to support this work. Additional resources which need to be provided can be made available through the governor's office at his discretion.

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 3rd day of January, 1992.

Buddy Roemer
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

EXECUTIVE ORDER EWE 92-1

WHEREAS, pursuant to the Tax Reform Act of 1986 (the "Act") and Act 51 of the 1986 Louisiana Legislative Session, Executive Order BR 88-35 establishing (i) a method for the allocation of bonds subject to the private activity bond volume limits, including the method of allocation of bonds subject to the private activity bond volume limits for this calendar year 1992 (the "1992 Ceiling"), (ii) the procedure for obtaining an allocation of bonds under the 1992 Ceiling and (iii) a system of central recordkeeping for such allocations; and

WHEREAS, the Louisiana Public Facilities Authority has requested an allocation in the amount of $3,546,611 from the 1992 Ceiling to be used in connection with the financing of a statewide student loan program (the "Program"); and

WHEREAS, the governor has determined that the program serves a crucial need and provides a benefit to the State of Louisiana; and

WHEREAS, it is the intent of the governor of the state of Louisiana that this executive order, to the extent inconsistent with the provisions of Executive Order BR 88-35, supercedes and prevails over such provisions with respect to the allocation made herein;

NOW, THEREFORE, BE IT ORDERED BY EDWIN W. EDWARDS, Governor of the State of Louisiana, as follows:

SECTION 1: That the bond issue described in this Section is hereby granted an allocation from the 1992 Ceiling in the amount shown:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
$3,546,611	Louisiana Public Facilities Authority	Statewide Student Loan Program

SECTION 2: The allocation granted hereunder is to be used only for the bond issue described in Section 1 and for the general purpose set in the "Application for Allocation of a Portion of the State of Louisiana IDB Ceiling" submitted in connection with the bonds described in Section 1.

SECTION 3: The allocation granted hereby shall be valid and in full force and effect through April 30, 1992, provided that such bonds are delivered to the initial purchasers thereof on or before April 30, 1992.

SECTION 4: The undersigned certifies, under penalty of perjury, that the allocation granted hereby was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

SECTION 5: That this executive order, to the extent conflicting with the provisions of Executive Order BR 88-35, supersedes and prevails over the provisions of such Executive Order.

SECTION 6: All references herein to the singular shall include the plural and all plural references shall include the singular.

SECTION 7: This executive order shall be effective upon signature of the Governor.

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 23rd day of January, 1992.

Edwin Edwards
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

EXECUTIVE ORDER EWE 92-2

WHEREAS, pursuant to the Tax Reform Act of 1986 (the "Act") and Act 51 of the 1986 Louisiana Legislative Session, Executive Order BR 88-35 establishing (i) a method for the allocation of bonds subject to the private activity bond volume limits, including the method of allocation of bonds subject to the private activity bond volume limits for this calendar year 1992 (the "1992 Ceiling"), (ii) the procedure for obtaining an allocation of bonds under the 1992 Ceiling and (iii) a system of central record keeping for such allocations; and

WHEREAS, the Parish of St. Charles has requested an allocation in the amount of $50,000,000 from the 1992 Ceiling to be used in connection with the financing of certain solid waste disposal, sewage, air pollution control and/or water pollution control facilities (the "Project") a Unit 3 (Nuclear) of the Waterford Steam Electric Generating Station of Louisiana Power & Light Company, a Louisiana corporation (the "Company"), located in St. Charles Parish, at Taft, Louisiana; and

WHEREAS, the governor has determined that the program serves a crucial need and provides a benefit to the state of Louisiana and the Parish of St. Charles; and

WHEREAS, it is the intent of the governor of the state of Louisiana that this executive order, to the extent inconsistent with the provisions of Executive Order BR 88-35, supercedes and prevails over such provisions with respect to the allocation made herein;

NOW, THEREFORE, BE IT ORDERED BY EDWIN W. EDWARDS, Governor of the State of Louisiana, as follows:

SECTION 1: That the bond issue described in this Section is hereby granted an allocation from the 1992 Ceiling in the amount shown:

AMOUNT OF ALLOCATION	NAME OF PROJECT	NAME OF ISSUER
$20,000,000	Parish of St. Charles	Louisiana Power & Light Company (Waterford)

SECTION 2: The allocation granted hereunder is to be used only for the bond issue described in Section 1 and for the general purpose set in the "Application for Allocation of a Portion of the State of Louisiana IDB Ceiling" submitted in connection with the bonds described in Section 1.

SECTION 3: The allocation granted hereby shall be valid and in full force and effect through June 30, 1992, provided that such bonds are delivered to the initial purchasers thereof on or before June 30, 1992.

SECTION 4: The undersigned certifies, under penalty of perjury, that the allocation granted hereby was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

SECTION 5: That this executive order, to the extent conflicting with the provisions of Executive Order BR 88-35, supercedes and prevails over the provisions of such executive order.

SECTION 6: All references herein to the singular shall include the plural and all plural references shall include the singular.

SECTION 7: This executive order shall be effective upon signature of the governor.

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 23rd day of January, 1992.

Edwin Edwards
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days. This emergency action is necessary in order that this rule be in effect until it can be formally approved by the new commission members.

Title 35
HORSE RACING
Part XIII. Wagering
Chapter 103. Pari-mutuels
§10303. Exchange of Pari-mutuel Ticket

The exchange of a valid pari-mutuel ticket having a face value of $500 or less may be made at the window at which the ticket was originally purchased. Any exchange of a valid pari-mutuel ticket with a face value over $500 must be approved by the mutuel manager.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:149.

HISTORICAL NOTE: Adopted by the Louisiana State Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:439 (December 1976), amended LR 3:35 (January 1977), LR 4:281 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 18: (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days.

Title 35
HORSE RACING
Part XIII. Wagering
Chapter 111. Trifecta
§11115. Field Less Than Nine

A. Trifecta wagering will be permitted when the number of scheduled starters in a thoroughbred or quarter horse race is nine or more. A late scratch after wagering begins on that race will not cancel trifecta wagering.

B. The commission may approve trifecta wagering on a race with a purse value of $200,000 or more where the number of scheduled starters is less than nine.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission LR 11:616 (June 1985), amended Department of Economic Development, Racing Commission, LR 18: (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is December 27, 1991 for 120 days.

Title 35
HORSE RACING
Part XV. Off-Track Wagering
Chapter 123. General Rules
§12357. Other Reports

A. - C. ...

D. Whenever an off-track wagering licensee applies to a city, parish or other governing authority for any change whatsoever in license fees, that licensee shall notify in writing the commission of such application no less than 30 days prior to any public hearing for such application.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission LR 14:290 (May 1988), amended Department of Economic Development, Racing Commission, LR 18 (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days.

Title 35
HORSE RACING
Part III. Personnel, Registration and Licensing
Chapter 57. Association's Duties and Obligations
§5702. Penalty for Failure to Comply

Should a permittee or licensee fail to promptly comply with each provision of R.S. 4:146(B), R.S. 4:161(B), or R.S. 4:222, the permittee or licensee who fails to comply with such provision(s) may be subject to a fine of $200 for each day such violation shall continue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, 146, 148, 161 and 222.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Racing Commission LR 17:258 (March 1991), amended LR 18: (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days.

Title 35
HORSE RACING
Part V. Racing Procedures
Chapter 63. Entries
§6319. Publication of Past Performances

No horse shall be permitted to enter or start unless approved by the association. Further, the stewards shall require that published past performances, in races or workouts, be sufficient to enable the public to make a reasonable assessment of its racing capabilities. No horse shall be entered to race that has not had a published workout or a race within 60 days of the date of the entered race. Horses without sufficient workouts must be scratched by the stewards before any wagering begins on that day's racing program. Late workouts shall be posted for public view in at least one conspicuous place in the public enclosure, and announced to the public via public address system.

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

HISTORICAL NOTE: Adopted by the Louisiana State Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:436 (December 1976), repromulgated LR 3:33 (January 1977), LR 4:279 (August 1978), amended by the Department of Economic Development, Racing Commission LR 17:262 (March 1991), LR 18: (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days. This emergency action is necessary in order that this rule be in effect until it can be formally approved by the new commission members.

Title 35
HORSE RACING
Part I. General Provisions
Chapter 17. Corrupt and Prohibited Practices
§1733. Racing a Horse Under Investigation

A. When a report as described in §1729 is received from the state chemist, the state steward shall immediately advise the trainer of his rights to have the "split" portion of the sample tested at his expense. The stable shall remain in good standing pending a ruling by the stewards, which shall not be made until the "split" portion of the original sample is confirmed positive by a laboratory chosen by the trainer from a list of referee laboratories. The horsemen's bookkeeper shall not release any purse monies until the results of the

split portion of the sample are received by the commission. The horse allegedly to have been administered any such drug or substance shall not be allowed to enter in a race during the investigation and hearing or until the split sample results are received by the commission, whichever occurs first.

B. In the event the horse is claimed in the race in which the horse allegedly ran with a prohibited drug or substance, the new owner may enter and race the horse; however, should the horse be claimed thereafter by the same owner who raced the horse, allegedly with prohibited drug or substance, in the previous race in question, the horse shall not be allowed to enter a race during the investigation and hearing concerning the horse in the previous race in question.

C. For the purpose of this rule *the investigation and hearing* referred to herein shall mean the steward's hearing following receipt of the report of the state chemist described herein and in §1729.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:142 and 148.

HISTORICAL NOTE: Adopted by the Louisiana State Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), repromulgated LR 4:287 (August 1978), amended LR 7:262 (May 1981), LR 9:755 (November 1983).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is December 27, 1991 for 120 days.

Title 35
HORSE RACING
Part III. Personnel, Registration and Licensing
Chapter 21. Stewards
§2101. Qualifications for Appointment

To qualify for commission appointment or approval as a steward an individual shall be required to:

A. document five years prior experience as a steward, racing secretary, assistant racing secretary, starter, placing judge, paddock judge, clerk of scales, jockey, trainer or equivalent experience in the racing industry;

B. satisfactorily pass a commission-approved "Stewards Training Program." This requirement may be waived for individuals who have served as a steward for at least two years in a recognized jurisdiction at an extended thoroughbred or quarter horse pari-mutuel race meeting, and who is otherwise qualified to serve as a steward;

C. satisfactorily pass an optical examination conducted not more than 90 days before the appointment, indicating 20-20 vision, corrected and the ability to distinguish colors.

D. satisfactorily pass a criminal background check;

E. satisfactorily pass a written examination prescribed by the commission. A passing grade for the written exam is 85 on scale of 100. Applicants must satisfactorily pass the written examination every three years;

F. participate in an oral interview conducted by the executive director or a designee of the executive director; and

G. be physically fit to perform the duties of a steward.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission LR 2:424 (December 1976), repromulgated LR 3:20 (January 1977), amended LR 4:271 (August 1978), Department of Economic Development, Racing Commission, LR 18: (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days. This emergency action is necessary in order that this rule be in effect until it can be formally approved by the new commission members.

Title 35
HORSE RACING
Part I. General Provision
Chapter 17. Corrupt and Prohibited Practices
§1775. Testing of a Split or Referee Sample

The following procedure is hereby established for the testing of a split or referee sample.

A. After a horse has voided and its urine collected for testing, the volume of urine collected shall be split or divided into approximately equal parts, one being processed for initial commission laboratory testing for the detection of the presence of prohibited drugs or substances therein. The remaining part shall be identified as the split or referee sample to be processed for future testing under the procedures hereby established. If the urine is from a two-year-old horse, the specimen tag shall so indicate.

B. Should blood be drawn at the test or retaining barn for testing, it shall be split or divided into approximately equal parts to be processed for testing by the initial commission test and the split or referee test. If the blood is from a two-year-old horse, the specimen tag shall so indicate.

C. Within 72 hours from the time the stewards notify a trainer that the initial commission laboratory test on a urine or blood specimen from a horse entered and raced by him was positive for the presence of a prohibited drug or substance, the trainer must request the stewards in writing to have the split or referee sample tested by an approved referee laboratory. The commission shall provide a list of referee laboratories which must be able to demonstrate competency for that drug or substance at the estimated concentration reported by the primary laboratory, from which a trainer must select one. At the time of his request the trainer

must forward the necessary fees to cover all expenses to be incurred in shipping and testing the split or referee sample to the referee laboratory. Failure of a trainer to make a request to the stewards for a split sample within the required 72 hours constitutes a waiver of any and all rights to have the split or referee sample tested.

D. A trainer timely requesting a testing of a split or referee sample shall select one of the laboratories designated by the commission as referee laboratories to perform the testing. The trainer shall sign a hold-harmless agreement for a split sample laboratory and an agreement that the results of the split sample laboratory can be introduced as evidence in any hearing, said agreements shall remain with the stewards of the track at which the positive was reported.

E. If the split portion of the test confirms the findings of the primary laboratory it shall constitute prima facie evidence of a violation of the applicable provisions of this Chapter.

F. If the split portion of the test does not confirm the findings of the primary laboratory, the commission shall not consider the sample to constitute prima facie evidence of a violation of the applicable provisions of this Chapter and no penalty shall be imposed, except as provided in Subsection G hereof.

G. If not fault of the commission, its agents or employees, a split portion of the sample cannot be tested because of loss, damage, or decomposition then, and in that event only, the findings of the primary laboratory shall constitute the prima facie evidence of a violation of the applicable provisions of this Chapter.

H. The identity of the drug or substance shall be revealed to the referee laboratory. Any communication between the primary and referee laboratory is limited to the exchange of the analytical method and threshold level used to confirm the identity of the drug or substance.

I. *Primary laboratory* for the purpose of this rule shall mean the laboratory selected by the commission to test urine or blood for the presence of prohibited drugs or substances.

J. *Referee laboratory* for the purpose of this rule shall be one of the referee laboratories approved by the commission to test split portions of urine or blood samples when timely requested by a trainer.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission LR 8:405 (August 1982), amended LR 10:660 (September 1984).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days.

Title 35
HORSE RACING
Part V. Racing Procedures
Chapter 63. Entries
§6329. Two Races on a Day

A. No horse may be entered in two races in a single day of racing unless one is a stakes race. Preference of running in a stakes race or purse race must be declared at scratch time.

B. Any horse entered to race at more than one association on the same day in which one is not a stakes race shall be scratched from all races in which it was entered and the trainer shall be subject to a fine by the stewards serving at each association.

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

HISTORICAL NOTE: Promulgated by the Louisiana State Racing Commission in 1971, repromulgated by Department of Commerce, Racing Commission LR 2:437 (December 1976), amended LR 3:33 (January 1977), LR 4:280 (August 1978), amended LR 13:289 (May 1987), Department of Economic Development, Racing Commission, LR 18: (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days. This emergency action is necessary in order that this rule be in effect until it can be formally approved by the new commission members.

Title 35
HORSE RACING
Part I. General Provisions
Chapter 17. Corrupt and Prohibited Practices
§1737. When Horse Found Drugged

Should the chemical analysis of any sample of the blood, saliva, urine or other excretions of body fluids of a horse contain any prohibited drug or substance of any description, not permitted by Chapter 15 or prohibited by §1719 the trainer of such horse shall be entitled to request a split sample as provided for in §1775. Following confirmation of a split sample by a referee laboratory that a split sample was positive for the same drug or substance contained in the primary sample not permitted by Chapter 15 or prohibited by §1719, the trainer of the horse may, after a hearing before the stewards, be fined, suspended or ruled off, if the stewards conclude that the prohibited drug or substance contained in the sample could have produced analgesia in, stimulated or depressed the horse, or could have masked or screened a drug or substance which could have produced analgesia in, stimulated or depressed the horse. The stable foreman, groom and any other person shown to have had the care or attendance of the horse may be fined, suspended or ruled off. The owner(s) of a horse so found to have received

administration of such prohibited drug or substance shall be denied, or shall promptly return, any portion of the purse or sweepstakes and any trophy awarded to such horse, and the said purse, sweepstakes and any trophy shall be distributed as in the case of a disqualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:142 and 148.

HISTORICAL NOTE: Adopted by the Louisiana State Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), LR 3:45 (January 1977), repromulgated LR 4:287 (August 1978), amended by the Department of Economic Development, Racing Commission LR 16:764 (September 1990).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Racing Commission

The effective date of the following emergency rule is February 28, 1992 for 120 days.

Title 35
HORSE RACING
Part VII. Equipment and Colors
Chapter 89. Whips
§8903. Size; Approval

No whip shall weigh more than one pound, nor exceed 31 inches in length including the popper. No stingers or projections extending through the hole of a popper, nor any metal part on the whip shall be permitted. All whips shall be approved by the stewards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:147, 148 and 172.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 2:443 (December 1976), repromulgated LR 3:39 (January 1977), amended LR 4:284 (August 1978), Department of Economic Development, Racing Commission, LR 18: (1992).

Claude P. Williams
Executive Director

DECLARATION OF EMERGENCY

Department of Economic Development
Real Estate Appraisal Subcommittee

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Real Estate Appraisal Subcommittee has adopted emergency revisions to the rules and regulations affecting prequalifying education as it relates to the state appraiser certification process.

The purpose of this declaration of emergency rule, effective January 8, 1992, for 60 days, is to continue the present regulations until February 20, 1992 when they become effective as rules.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXVII. Real Estate
Subpart 2. Appraisers
Chapter 103. Certification
§10307. Basic Education Requirement for Certification

A. Approved Courses

1. The subcommittee shall provide a list prescribing and defining the subjects related to real property appraisal that will satisfy the precertification educational requirements of R.S. 37:3399 A. and B. The list shall include:

a. specific appraisal subjects to be mandatory requirements for Residential and General certification and the minimum number of hours that must be completed in each subject;

b. appraisal subjects to be designated as "electives" and the maximum number of hours of elective study acceptable toward Residential and General certification; and

c. a comprehensive listing of acceptable course offerings, including providers and their addresses and telephone numbers.

B. Applicability

1. The subcommittee will consider, for approval, appraisal courses offered by the following:

a. appraisal organizations;

b. colleges and universities;

c. proprietary real estate schools approved by the LREC;

d. federal or state entities; and

e. proprietary schools registered with the Louisiana Proprietary School Commission, a division of the Louisiana State Department of Education.

C. Application

1. Education providers must apply directly to the subcommittee for course approval. Application forms will be provided by the subcommittee. Information to be submitted for each course offering shall include: course content, program structuring, course completion standards, instructor qualifications, minimum number of classroom hours, textbook and course materials, and any additional information as requested by the subcommittee.

D. Length of Approval

1. Upon approval by the subcommittee, courses will be listed on the approved course list for a period of one year. At its discretion, the subcommittee may elect to automatically extend approval beyond the initial one-year period or request updated course information prior to extending approval for another one-year period.

E. Additional Course Approval

1. Any applicant completing appraisal courses through providers not listed with the subcommittee must apply for and receive approval for such coursework prior to formal application for certification. The applicant must provide the agency with proof of course completion, number of classroom hours, examination requirement, detailed course content, and any additional information on the subject matter to permit the agency to render an informed decision on the request.

F. Course Monitoring

1. As a condition for approval, education providers listed on the approved course list must agree to periodic monitoring of courses by the subcommittee or its authorized representative(s).

G. Withdrawal of Approval

1. The subcommittee reserves the right to withdraw approval and remove, from the approved course list, a course and/or the education provider for the course upon finding that the course fails to meet minimum standards of approval endorsed by the Appraiser Qualifications Board of the Appraisal Foundation as established by the Federal Financial Institutions Examination Council or its successors. A withdrawn approval may not be reinstated for at least a two-year period.

Jane H. Moody
Executive Director

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Salary Schedule for Postsecondary Vocational-Technical Personnel, FY 1991-92

The Board of Elementary and Secondary Education, at its meeting of January 23, 1992, exercised those powers conferred by the Administrative Procedure Act R.S. 49:953(B) and adopted the salary schedule for Postsecondary Vocational Technical Personnel FY 1991-92 along with the Department of Education's recommendations listed below for funding of salaries for all postsecondary vocational-technical personnel for Fiscal Year 1991-92.

Department of Education's Recommendations

1. Suspend the new pay plan that was adopted by the board in August, 1989 for Fiscal Year 1991-92.

2. Continue the use of the board-approved, September 1, 1984 and revised August 20, 1990, salary schedule with the following changes:

a. Make each yearly step increase consistent by category.

b. Add two steps to the base plus 12 step salary schedule. This will allow all unclassified employees to receive a one-step raise.

3. All classified employees will receive their regular merit increase of 4 percent on their anniversary date, and those classified employees who qualify will receive an additional 4 percent pay equalization raise.

4. Authorize each technical institute director and regional management center director to work with other state agencies that are providing funding for personnel in the postsecondary vocational-technical system to seek additional funds or budget revisions to accommodate salary adjustments for their personnel not on the state table of organization.

SALARY SCHEDULE FOR STATE TECHNICAL INSTITUTES
EFFECTIVE SEPTEMBER 26, 1991

	INSTRUCTOR			ASSISTANT DIRECTOR		DIRECTOR (1-13 Staff)		DIRECTOR (14-26 Staff)		DIRECTOR (27-40 Staff)		DIRECTOR (41-55 Staff)		DIRECTOR (56 + Staff)	
	* No Degree	B.S.	M.A.	B.S.	M.A.	B.S.	M.A.	B.S.	M.A.	B.S.	M.A.	B.S.	M.A.	B.S.	M.A.
B	22,299	23,316	23,993	27,583	28,260	34,370	34,986	35,110	35,726	35,850	36,466	36,590	37,206	37,330	37,946
1	22,976	23,993	24,670	28,397	29,074	35,110	35,726	35,850	36,466	36,590	37,206	37,330	37,946	38,070	38,686
2	23,653	24,670	25,347	29,211	29,888	35,850	36,466	36,590	37,206	37,330	37,946	38,070	38,686	38,810	39,426
3	24,330	25,347	26,024	30,025	30,702	36,590	37,206	37,330	37,946	38,070	38,686	38,810	39,426	39,550	40,166
4	25,007	26,024	26,701	30,839	31,516	37,330	37,946	38,070	38,686	38,810	39,426	39,550	40,166	40,290	40,906
5	25,684	26,701	27,378	31,653	32,330	38,070	38,686	38,810	39,426	39,550	40,166	40,290	40,906	41,030	41,646
6	26,361	27,378	28,055	32,467	33,144	38,810	39,426	39,550	40,166	40,290	40,906	41,030	41,646	41,770	42,386
7	27,038	28,055	28,732	33,281	33,958	39,550	40,166	40,290	40,906	41,030	41,646	41,770	42,386	42,510	43,126
8	27,715	28,732	29,409	34,095	34,772	40,290	40,906	41,030	41,646	41,770	42,386	42,510	43,126	43,250	43,866
9	28,392	29,409	30,086	34,909	35,586	41,030	41,646	41,770	42,386	42,510	43,126	43,250	43,866	43,990	44,606
10	29,069	30,086	30,763	35,723	36,400	41,770	42,386	42,510	43,126	43,250	43,866	43,990	44,606	44,730	45,346
11	29,746	30,763	31,440	36,537	37,214	42,510	43,126	43,250	43,866	43,990	44,606	44,730	45,346	45,470	46,086
12	30,423	31,440	32,117	37,351	38,028	43,250	43,866	43,990	44,606	44,730	45,346	45,470	46,086	46,210	46,826
13	31,100	32,117	32,794	38,165	38,842	43,990	44,606	44,730	45,346	45,470	46,086	46,210	46,826	46,950	47,566
14	31,777	32,794	33,471	38,979	39,656	44,730	45,346	45,470	46,086	46,210	46,826	46,950	47,566	47,690	48,306

INCREMENTS	INSTRUCTOR	ASSISTANT DIRECTOR	DIRECTOR	INCREMENT FOR DEPARTMENT HEAD
Merit	677	814	740	
Specialist	977	977	889	4-6 (including head) $651
Ph.D or Ed.D.	1,302	1,302	1,185	7 + (including head) 782
AD Nurse (72)	575			
3 Yr. Diploma (96)	735			

NOTE: The minimum extension rate shall be $15 per hour and the maximum rate shall be $20 per hour.

* COLLEGE CREDITS

3 hrs.	$ 39	57 hrs.	$475
6 hrs.	78	60 hrs.	495
9 hrs.	117	63 hrs.	515
12 hrs.	156	66 hrs.	535
15 hrs.	195	69 hrs.	555
18 hrs.	215	72 hrs.	575
21 hrs.	235	75 hrs.	595
24 hrs.	255	78 hrs.	615
27 hrs.	275	81 hrs.	635
30 hrs.	295	84 hrs.	655
33 hrs.	315	87 hrs.	675
36 hrs.	335	90 hrs.	695
39 hrs.	355	93 hrs.	715
42 hrs.	375	96 hrs.	735
45 hrs.	395	99 hrs.	755
48 hrs.	415	102 hrs	775
51 hrs.	435	105 hrs.	795
54 hrs.	455		

1. In changing position from instructor, student personnel services officer, D.E. Coordinator or Supervisor Trainer to Assistant Director or from Assistant Director to Director, no reduction in salary will be given. The salary in the new position shall be determined by placing the employee's salary on the lowest step that will provide for an increase of at least one full increment of new position.

2. All employees employed prior to September 26, 1991 will be placed on their present step.

3. Beginning employees will be employed at base salary.

4. Personnel transferring from one technical institute to another, from the La. Technical Resource Center to a technical institute or vice versa, will be considered lateral transferees with no pay adjustment necessary.

5. Former employees when re-employed will not be considered new employees for pay purposes, but will be given credit for prior Louisiana technical institute experience, as follows: 1 year - 1 step; 2-4 years - 2 steps; 5-7 years - 3 steps; 8 and above - 4 steps. Personnel who left after July 1, 1981 and who are being re-employed will be placed on their former step. If a former employee was RIF'd and has been employed in the Vocational-Technical System under another source of funding and re-employed in a state T. O. position, he or she will be given credit for pay purposes for those years worked.

6. Eligible personnel may receive an educational increment for a specialized degree or a doctor's degree, but not both.

7. To receive an increment, an employee must have been employed in a position for more than six months in the prior fiscal year.

8. No increment for additional hours completed shall be added to a salary at any time other than July 1.

These recommendations, along with the salary schedule for state technical institutes were previously adopted as an emergency rule, effective September 26, 1991 and printed in full in the October, 1991 issue of the *Louisiana Register*. This proposed policy is being re-adopted as an emergency rule in order to continue the policy until it becomes effective as a rule on March 20, 1992. Effective date of this emergency rule is January 23, 1992.

Carole Wallin
Executive Director

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Waivers of Minimum Standards: Procedures
Pilot Programs in Special Education

The Board of Elementary and Secondary Education, at its meeting of January 23, 1992, exercised those powers conferred by the Administrative Procedure Act R.S. 49:953(B) and adopted the following policy which is an amendment to the Louisiana Administrative Code, Title 28: Education.

Emergency adoption was necessary in order to expedite the processing of pilot program approval and to meet the Board of Elementary and Secondary Education expectations regarding timely responses to school system requests. Effective date of emergency rule is January 24, 1992.

Title 28
EDUCATION
Part I. Board of Elementary and Secondary Education
Chapter 3. Rules of Procedure
§313. Waivers of Minimum Standards: Procedures

* * *

E. Pilot Programs in Special Education

1. The department may grant annual approval to school systems to conduct pilot programs upon receipt of a request signed by the superintendent which details how the pilot program is to be implemented and the reason for its implementation.

2. An annual report must be submitted to the department upon completion of the pilot program.

3. The department will submit to the board, a semi-annual report on approvals granted.

4. A school system may appeal department disapproval of a pilot program to the board.

Carole Wallin
Executive Director

DECLARATION OF EMERGENCY

Department of Social Services
Office of Community Services

The Department of Social Services, Office of Community Services has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following rule in the Adoption Program. Emergency rulemaking is necessary as Act 235, the Children's Code, became effective January 1, 1992.

This rule is mandated by the Children's Code, Title XII, Chapter 2. The emergency rule amends, reenacts, and revises laws in respect to Private Adoptions. This rule hereby supercedes the notice published in the September 20, 1991, *Louisiana Register*, Vol. 17, No. 9, pp. 917-918.

EMERGENCY RULE

I. Certificate of Adoption. Any prospective adoptive parent in a private adoption shall obtain a Certificate of Adoption prior to physically receiving the child.

II. Definitions

A. *Certificate of Adoption* means that a person who applies to adopt a child privately is certified as qualified to adopt in accordance with the Louisiana Children's Code. A Certificate of Adoption is valid a minimum of two years without an update being required. A Certificate of Adoption can be revoked for just cause.

B. *Any prospective adoptive parents* in this section means any couple who is adopting any child except a stepchild, grandchild, sibling, niece, or nephew of one of the prospective adopting parents or child placed by an agency.

III. Procedures. There are two procedures by which a valid Certificate of Adoption may be obtained by any prospective adoptive couple in Louisiana attempting to adopt privately. Any out-of-Louisiana prospective adoptive couple must also comply with the Louisiana Interstate Compact on Placement of Children.

A. The prospective adoptive couple may apply for a court order approving the placement of a child in their home. The court shall be of proper venue in the state of Louisiana. The application for court approval of adoptive placement shall be verified and shall contain the following:

1. the name, address, age, occupation, and marital status of the prospective adoptive parents;

2. the expected date of the child's placement;

3. the relationship between the child and the prospective adoptive parent, if any;

4. the name of the child whose placement is requested, if known;

5. this application for court approval of adoptive placement shall be filed with the clerk of a court of appropriate venue as authorized in Louisiana's Children's Code;

6. the application for court approval of adoptive placement shall be set for hearing in chambers, confidentially, and in a summary manner within 48 hours of its filing;

7. at the hearing, the prospective adoptive parents shall testify under oath concerning their fitness to receive the child into their care and custody including but not limited to:

a. their moral fitness, previous criminal records or validated complaints of child abuse or neglect, if any;

b. their mental and physical health;

c. their financial capacity and disposition to provide the child with food, clothing, medical care, and other material needs;

d. their capacity and disposition to give the child love, affection, and guidance and to undertake the responsibilities of becoming the child's parents;

e. the adequacy of the physical environment of their home and neighborhood for the placement of the child;

f. the names and ages of other family members who would reside with the child in the prospective adoptive home

and their attitude toward the proposed adoption;

g. the stability and the permanence, as a family unit, of the proposed adoptive home;

8. at the conclusion of the hearing the court shall render an order approving or disapproving the placement of the child with the prospective parents;

9. the order shall be in writing and signed by the judge;

10. a certified copy of the court order approving the adoptive placement shall be given to the prospective adoptive parents. This certified court order is the Certificate of Adoption if approval is granted;

11. any order disapproving the adoptive placement shall include specific reasons therefor;

12. any perjury, withholding of information or misleading statements, during this hearing, may be grounds for revocation of the Certificate of Adoption, or for revoking the adoption itself.

B. The second procedure for obtaining a Certificate of Adoption is that any person qualified to adopt in Louisiana may request a social worker of a licensed child placing agency, a board certified social worker, a licensed counselor, psychologist, or psychiatrist to conduct a home study before the physical placement of the child in the home. Those people or agencies doing the home study shall be licensed in their respective fields in the state of Louisiana.

1. This home study must address, as appropriate, in writing all the items in the following sections of the Louisiana Administrative Code, namely:

LAC 48:4115(C) Adoptive Home Study; LAC 48:4115(D) Notification regarding application; LAC 48:4115(E) Access to Records; LAC 48:4115(F) Updating Home Study; LAC 48:4115(H) Review Procedure; LAC 48:4115(I) Adoptive Parents' Records.

2. This home study must also contain a criminal records check for all federal and state arrests and convictions, and validated complaints of child abuse and neglect, respectively, in this or any other state for each prospective adoptive parent. This study shall provide a certificate indicating all information discovered or that no information has been found.

a. Attorneys representing prospective adoptive couples living in Louisiana for private adoptions must request the court having jurisdiction to order a Louisiana child abuse/neglect records check from the Office of Community Services Regional Office for the parish of residence of the prospective adoptive couple with the results of said check to be submitted in writing to the court. The court order shall be sent to the attention of the Adoption Petition Unit.

b. The mailing address of the regional offices of the Office of Community Services where this form may be obtained are as follows:

New Orleans Regional Office, Box 57149, New Orleans, La. 70157-7149;

Baton Rouge Regional Office, Box 66789, Baton Rouge, La. 70896;

Lafayette Regional Office, 1353 Surrey Street, Lafayette, La. 70501;

Lake Charles Regional Office, Box 16865, Lake Charles, La. 70616;

Alexandria Regional Office, Box 832, Alexandria, La. 71309;

Shreveport Regional Office, 801 State Office Building, 1525 Fairfield Avenue, Shreveport, La. 71101-4388;

Monroe Regional Office, Box 3047, Monroe, La. 71210;

Thibodaux Regional Office, Box 998, Thibodaux, La. 70302-0998.

3. The prospective adoptive couple at the end of this home study shall be given a Certificate of Adoption if favorable in the judgement of the contracted person doing the home study in accordance with Louisiana Children's Code. If there is a disapproval, the prospective adoptive couple shall be informed in writing of the reason for the disapproval.

IV. Enforcement

The Department of Social Services, Office of Community Services in carrying out the duties as detailed in the Children's Code Title XII Chapter 10 Article 1229 (A) shall include in the report to the court a copy of the Certificate of Adoption for the prospective adoptive couple or report to the court in writing that no Certificate of Adoption has been obtained in accordance with the Louisiana Children's Code.

Gloria Bryant-Banks
Secretary

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following rule effective February 1, 1992 in the Food Stamp Program.

Emergency rulemaking is necessary to comply with USDA Food and Nutrition Service directives to implement federal regulations at 7 CFR 271.2, 273.1, 278.1, 273.5, 273.8, 273.9 and pages 63952-63617 of FR 56, No. 233.

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

The effective date of the following emergency rule is February 1, 1992.

Title 67
DEPARTMENT OF SOCIAL SERVICES
Part III. Office of Family Support
Subpart 3. Food Stamps

Chapter 17. Administration

* * *

Subchapter B. General Administrative Requirements

* * *

§1711. Disabled People in Group Living Arrangements

A. All individuals residing in group living arrangements who meet the Food Stamp Act's definition of "disabled" (as defined in Section 3(r) of the Food Stamp Act) are eligible to receive food stamps to purchase their prepared meals.

* * *

Chapter 19. Certification of Eligible Household

* * *

Subchapter E. Students

* * *

§1937. Student Related Provisions

* * *

4. Exclusions from Educational Assistance

* * *

c. All educational assistance will be excluded in the same manner regardless of the source of the assistance, i.e., an exclusion from educational income shall be granted based on amounts earmarked by the institution, school program, or other grantor as made available for the specific costs of tuition, mandatory fees, books, supplies, transportation, and miscellaneous personal expenses (other than living expenses).

d. The definition of mandatory fees includes the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course of study involved.

e. The maximum age level of students attending institutions of higher education who are prohibited from receiving food stamp assistance shall be lowered from 60 years to 50 years of age.

f. Eligible student status shall be granted to students participating in a state or federally financed work study program during the regular school year and the work incentive program under Title IV of the Social Security Act or its successor programs.

g. The funds from PASS (Plan for Achieving Self-Support) accounts will be excluded as income for the food stamp program.

§1949. Exclusions from Resources

* * *

3. Inaccessible resource - one whose sale or other disposition is unlikely to produce any significant amount of funds for the support of the household.

4. State agencies shall not be required to require verification that a resource is inaccessible unless the information provided by the household is questionable.

B. All of the resources of recipients of AFDC; SSI; and aid to the aged, blind, or disabled under Titles I, II, X, XIV, or XVI of the Social Security Act are excluded.

* * *

§1964. Standard Shelter Estimate

Effective February 1, 1992 homeless households which do not receive free shelter throughout the calendar month shall be entitled to a Standard Shelter Estimate (SSE) of $128.00. The $128.00 SSE is a USDA-FNS determined estimate of reasonable expenses related to shelter costs which a homeless household may be expected to incur. All homeless households which incur or reasonably expect to incur shelter costs during a month shall be eligible for the SSE unless higher shelter costs are verified. If shelter costs in excess of $128.00 are verified, the household may use actual costs rather than the SSE.

* * *

§1987. Categorical Eligibility for Certain Recipients

* * *

5. Households in which all members receive assistance from a Local General Assistance Program shall be considered categorically eligible for food stamps provided the LGA program has income and resource standards which do not exceed the food stamp limits; the LGA benefits are provided to assist in meeting living expenses; and the LGA benefits are on-going (not limited to emergency assistance).

Gloria Bryant-Banks
Secretary

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, and R.S. 56:317 which provides that the secretary of the department may declare a closed season when it is in the best interest of the state; the secretary of the department of Wildlife and Fisheries hereby finds that an imminent peril to the public welfare exists and accordingly adopts the following emergency rule.

Effective 12:01 a.m. January 27, 1992 the recreational fishery for king mackerel in Louisiana waters will close and remained closed until 12:01 a.m. July 1, 1992.

The secretary was notified by the Gulf of Mexico Fishery Management Council and the National Marine Fisheries Service on January 15, 1992 that the gulfwide recreational king mackerel quota had been reached and the season closure is necessary to prevent overfishing of this species.

Joe L. Herring
Secretary

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

In accordance with the emergency provisions of R.S.49:953(B), the Administrative Procedure Act, R.S. 56:6(25)(a) which delegates the authority to the commission to set daily take and possession limits, based upon biological and technical data, and R.S.56:333 which authorizes the Wildlife and Fisheries Commission to establish rules for the harvest of mullet, the commission finds that the present limit of 200 pounds for that season constitutes an immediate threat to markets established for mullet as a food fish during the January 13 to October 14 period. The commission further finds that no biological evidence has been presented to support the 200 pound limit. The loss of the ability to harvest in these quantities constitutes an imminent peril to the public welfare because of the irrevocable loss of income and commerce to the state.

The Wildlife and Fisheries Commission hereby finds that an imminent peril to the public welfare exists and accordingly adopts the following emergency rule:

The limit for the taking of mullet outside of the established season of October 15 through January 12 is hereby set as 1,500 pounds per day.

James H. Jenkins, Jr.
Chairman

Rules

RULE

Department of Agriculture and Forestry

In accordance with R.S. 49:950 et seq., the Department of Agriculture and Forestry has adopted LAC 7:I.105. This rule establishes form and procedure for persons wishing to submit petitions for adoption, amendment or repeal of rules, and complies with provisions of R.S. 49:953 (C).

Title 7
AGRICULTURE AND ANIMALS
Part I. Administration
Chapter 1. Administrative Procedure
§105. Petitions for adoption, amendment or repeal of rules; form and procedure

A. Petitions for the adoption, amendment or repeal of rules or regulations shall be submitted to the Commissioner of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806.

B. Petitions must be in writing and shall state the name and address of an individual who may be contacted relative to the contents of the petition.

C. Petitions shall fairly state the action sought. If the petitioner seeks to amend or repeal an existing rule or regulation, the petitions shall cite said rule or regulation.

D. In the case of adoption of wholly new rules and regulations, petitions shall state the law granting the authority for the adoption of the proposed rules and regulations.

E. Petitions for the adoption, amendment or repeal of rules or regulations shall be considered within the time period provided for in the Louisiana Administrative Procedure Act. Petitions shall either be denied in writing, stating reasons for the denial, or rule-making proceedings initiated in accordance with said Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, LR 18: (February 1992).

Bob Odom
Commissioner

RULE

Department of Economic Development
Office of Financial Institutions

In accordance with R.S. 49.950 et seq., and pursuant to authority granted by R.S. 6:121(B)(1), notice is hereby given that the commissioner of Financial Institutions adopts a rule for the purpose of establishing a fee or charge and expense reimbursement for exercising regulatory and supervisory authority over individuals and other legal entities licensed to sell checks or money orders in Louisiana.

In compliance with R.S. 6:121(B)(1), the Office of Financial Institutions, has established fees, charges, and expense reimbursement requirements for the examination of sale of checks licensees and their agents engaged in the sale of checks or money orders in Louisiana.

RULE

Title 10
BANKS, CREDIT UNIONS, SAVINGS AND LOANS, UCC, CONSUMER CREDIT
Part I. Banks
Chapter 1. General Provisions
§113. Examinations and Visitations; Fees and Charges

Each individual, partnership, association, or corporation that is licensed to sell checks or money orders in Louisiana shall pay the following fees and charges to the Office of Financial Institutions for examinations and visitations by the Office of Financial Institutions, whether conducted solely by the Office of Financial Institutions or jointly with the regulator of such activity in other jurisdictions and whether conducted in Louisiana or at the licensee's offices outside Louisiana:

A. thirty dollars per hour for each examiner who participates in the examination or visitation.

B. the actual cost of subsistence, lodging, and transportation for out-of-state examinations, not to exceed the amounts provided for in Division of Administration travel regulations in force at the time of such examination or visitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18: (February 1992).

§115. Statement of Anticipated Costs and Proceeds

A. The fees to be imposed by the commissioner will generate approximately $33,700, which will be offset by the cost of examination personnel of a like amount. Cost and expenditure figures are based on the projected number of hours to perform examinations and visitations of licensees and agents of sellers of checks or money orders.

B. The fees, charges, and expenses shall be paid by the examined licensee within 30 days after the Office of Financial Institutions mails its bill. Failure to pay within the allowed time shall be a basis for initiating proceedings to suspend the license, or the imposition of a penalty assessment of $50 for each day the fees, charges, and expenses remain unpaid, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Financial Institutions, LR 18: (February 1992).

Larry L. Murray
Commissioner

RULE

Department of Economic Development
Real Estate Appraisal Subcommittee

The Department of Economic Development, Real Estate Appraisal Subcommittee has adopted rules regarding investigations and adjudicatory proceedings.

These rules were published in their entirety as emergency rules in the November 20, 1991 issue of the *Louisiana Register*, and referenced in the notice of intent section of the same issue.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part LXVII. Real Estate
Subpart 2. Appraisers

Chapter 105. Investigations and Adjudicatory Proceedings

§10501. Investigations

A. The subcommittee may, upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of a certificate holder, or any person who assumes to act as such. Written complaints shall bear the original signature of the complainant or that of his legal representative before any action will be taken thereon by the subcommittee.

B. Upon documented probable cause and with the concurrence of the subcommittee attorney, or, in his absence, the chairman of the subcommittee, the executive director of the subcommittee may issue written authorization to investigate apparent violations of the Louisiana Certified Real Estate Appraisers Law and/or the rules and regulations of the subcommittee.

C. If during the conduct of an investigation documented probable cause is established indicating that violations of the Louisiana Certified Real Estate Appraisers Law and/or the rules and regulations of the subcommittee have been committed by any certificate holder other than the certificate holder against whom the original complaint was made, the additional certificate holders may be added as respondents to the investigation in the absence of any written complaint alleging such violations.

D. Investigations alleging violations of the Louisiana Real Estate Appraisers Law or the rules and regulations of the subcommittee shall be investigated by the staff of the Louisiana Real Estate Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisal Subcommittee, LR 18: (February 1992).

§10503. Technical Assistance

A. In any investigation conducted by the staff of the commission, the chairman of the subcommittee may be requested to assign a member of the subcommittee to provide technical assistance to the investigator conducting the investigation.

B. In any investigation conducted by the staff of the commission involving alleged violations of the standards for the development and communication of appraisals the chairman of the subcommittee shall assign a member of the subcommittee to provide technical assistance to the investigator in the conduct of the investigation.

C. When a member of the subcommittee has been assigned to provide technical assistance to a commission investigator, the member shall review the findings and recommendation resulting from the investigation and a written certification of the review signed by the subcommittee member will be provided to the commission investigator and appended to the report of investigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisal Subcommittee, LR 18: (February 1992).

§10505. Cooperation

A. Every certificate holder shall cooperate fully with and answer all questions propounded by commission personnel conducting an investigation for the subcommittee.

B. Every certificate holder shall produce any document, book, or record in the certificate holder's possession, or under his control, concerning any matter under investigation by commission personnel conducting an investigation for the subcommittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisal Subcommittee, LR 18: (February 1992).

§10507. Adjudicatory Proceedings

A. When, as a result of an investigation, it appears that violations of the Louisiana Certified Real Estate Appraisers Law may have been committed by a certificate holder, the violations may be adjudicated through informal or formal adjudicatory proceedings.

B. Informal Adjudicatory Proceedings. The complaint may be concluded informally without a public adjudicatory hearing on the recommendation of the hearing examiner of the commission with the concurrence of the executive director if the respondent agrees in writing to such informal action.

1. If the respondent does not agree in writing to the resolution of the complaint through informal proceedings the apparent violations will be referred to the subcommittee along with a recommendation for a public adjudicatory hearing.

2. A three-member panel consisting of the subcommittee attorney, the hearing examiner for the commission and the commission case investigator will be appointed by the executive director to conduct the informal proceedings. When the matter before the panel involves a case wherein technical assistance has been provided by a subcommittee member, the member of the subcommittee who participated in the investigation shall serve as a voting member of the panel. The panel will review the details of the complaint and the allegations with the respondent and arrive at a finding. During the informal proceedings witnesses may be called but no subpoenas will be issued and no formal transcript of the proceedings will be prepared by the subcommittee. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory hearings without the consent of all parties to the informal proceedings.

3. If as a result of the informal proceedings it is determined by the panel that violations were not committed as alleged, a written report of such findings will be submitted to the executive director for review and placement in the investigative file. The adjudicatory proceedings will be terminated without recourse to the subcommittee.

4. If as a result of the informal proceedings it is determined by a majority of the panel that violations have been committed as alleged, the panel may enter into a recommended consent order with the respondent to include any sanctions authorized. In any such consent order the respon-

dent must acknowledge the findings of the panel in writing, accepting the recommended sanctions, and waiving any rights to request a rehearing, reopening or reconsideration by the panel or hearing by the subcommittee, and the right to a judicial review of the consent order.

5. If the respondent does not agree with the findings of the panel and the sanctions recommended, the apparent violations will be referred to the subcommittee along with a recommendation for a public adjudicatory hearing.

6. If the respondent does agree with the findings of the panel and the sanctions recommended, the panel will, within five days, submit a written report of the findings and recommendations to the executive director for review. If for any reason the executive director is unavailable to review the actions of the panel, the subcommittee attorney will conduct the review.

7. If a complaint is concluded by the informal procedure, the executive director, or the hearing examiner for the commission, shall submit the consent order to the subcommittee at the next regular meeting for approval and authorization for the executive director to execute the consent order in the name of the subcommittee.

8. The actions of the subcommittee relative to all consent orders shall be noted in the minutes of the meeting at which the consent order is approved and authorization is granted to the executive director to execute the order in the name of the subcommittee.

9. Any consent order executed as a result of informal proceedings shall be executory on the date approved by the subcommittee.

C. Formal Adjudicatory Proceedings. All formal public adjudicatory hearings shall be conducted under the auspices of R.S. 37:3409 and Chapter 13 of Title 49 of the Louisiana Revised Statutes.

1. Subcommittee members who have provided technical assistance in any matter being adjudicated at formal adjudicatory proceedings will recuse themselves and not participate in any portion of the proceedings.

2. The order issued by the subcommittee pursuant to any formal public adjudicatory proceeding shall become effective 11 days from the date the order published by the subcommittee is received by the respondent certificate holder or on the date the notice of denial of a request for rehearing, reopening, or reconsideration of the decision or order by the agency is received by the respondent certificate holder.

3. The filing of a petition for judicial review by a respondent certificate holder does not itself stay enforcement of an order by the subcommittee. A stay of enforcement will be granted only when directed by the court conducting a judicial review of adjudication.

D. Costs of Adjudicatory Proceedings. On a finding that a respondent has committed the violations as alleged in any formal or informal adjudicatory proceedings, the subcommittee may assess the respondent the administrative costs of the proceedings, as determined by the subcommittee. Payment of these costs shall be a condition of the reinstatement of any certificate issued by the subcommittee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3395.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Appraisal Subcommittee, LR 18: (February 1992).

Jane H. Moody
Executive Director

RULE

Board of Elementary and Secondary Education

Amendment to the Louisiana Model Career Options Program Guide

Notice is hereby given that the Board of Elementary and Secondary Education, pursuant to notice of intent published November 20, 1991 and under the authority contained in the Louisiana Constitution (1974), Article VIII, Section 3, Act 800 of the 1979 Regular Session, adopted the following amendment to the Louisiana Model Career Options Program Guide, Bulletin 1895:

Bulletin 1895 - Model Career Options Program Guide

Delete page 15 which reads:

"If funds are available from the Louisiana Legislature for the MCOP, the employer's portion of the contribution to the teacher's retirement fund will be provided to the LEAs."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3901 - 3905.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 18: (February 1992).

Carole Wallin
Executive Director

RULE

Student Financial Assistance Commission
Office of Student Financial Assistance

Guarantee Fee Refund Termination after 180 Days

The Student Financial Assistance Commission (LASFAC) hereby amends its Loan Program Policy and Procedure Manual, Policy VII H by adding Section 5, Policy VIII F by adding Section 4 and Procedure 13 by adding Section D to enact the following policy change.

Guarantee fees on loans that are canceled more than 180 days after the certified date of each disbursement shall be retained by the agency.

Jack L. Guinn
Executive Director

RULE

Student Financial Assistance Commission
Office of Student Financial Assistance

Reinstatement of Cancelled Loan or Disbursement

The Student Financial Assistance Commission amends the procedure to reinstate a loan or disbursement that has been cancelled. Procedure 21.0 of the Loan Program Policy and Procedure Manual is amended to add Subsection B as follows:

* * *

B. To reinstate a loan or disbursement, the lender shall:

1. obtain Request for Cancellation Reversal form (available on request from Loan Administration Division);

2. complete the form:

a. identify lender and holder, indicating:

(1) lender's name;

(2) city where lender is located;

(3) Social Security number of borrower;

(4) loan number; and

(5) full name of borrower;

b. identify each disbursement to be restored:

(1) actual disbursement date (lender should indicate the scheduled disbursement date in this field);

(2) amount of each disbursement (before fees are deducted);

(3) origination fee for disbursement being reversed;

(4) insurance (or guarantee) fee for disbursement being reversed; and

(5) actual disbursed amount;

c. complete information indicating current status of loan:

(1) loan type;

(2) present loan status;

(3) school D.O.E. number;

(4) school begin date: month, day, year;

(5) school end date: month, day, year;

(6) anticipated graduation date: month, day, year;

(7) holder's (lender/servicer) D.O.E. number;

(8) effective date out of school (month, day, year);

(9) original date entered repayment (month, day, year); and

(10) current date entered repayment (month, day, year);

d. enter deferment data:

(1) deferment begin date;

(2) deferment end date; and

(3) deferment type;

e. enter current date.

f. enter legible signature of authorized lending official.

3. pay cancellation reversal fee of $30 for restoration of one disbursement or maximum of $60 for restoration of two or more disbursements;

4. pay appropriate guarantee fee for all disbursements being restored (see 2b (4)).

Jack L. Guinn
Executive Director

RULE

Student Financial Assistance Commission
Office of Student Financial Assistance

Teacher Shortage Areas in Louisiana

The Student Financial Assistance Commission hereby announces that teacher shortage areas have been designated for the State of Louisiana by the U.S. Department of Education. The deferment of Stafford and SLS loan repayment is available to new borrowers that teach in an approved shortage area. Under the Guaranteed Student Loan Program, for purposes of this deferment, a new borrower is defined as a first-time borrower for periods of enrollment beginning on or after July 1, 1987. Teaching in the approved shortage areas will reduce teacher payback for the Paul Douglas Teacher Scholarship Program.

Item A4 will be added to Procedure 43 of the Loan Program Manual as follows:

> In the State of Louisiana during the 1990-91 and 1991-92 elementary and secondary school years the special education areas designated by the State Superintendent of Education and approved by the U.S. Department of Education as teacher shortage areas are: Specific Learning Disabled (K-12), Cross-Categorized (K-12) and Speech/Language Impaired (K-12).

Chapter V, G 4 a ii (d) of the Scholarship/Grant Program Manual will be amended to provide:

> Paul Douglas Teacher Scholarship recipients who teach two years for each year of scholarship assistance shall have their obligation reduced by one-half when they teach in a teacher shortage area that is designated by the U.S. Department of Education.

Jack Guinn
Executive Director

RULE

Student Financial Assistance Commission
Office of Student Financial Assistance

Procedure for Determining Financial Need for Students Continuing in the Tuition Assistance Program (TAP)

The Student Financial Assistance Commission hereby amends the Scholarship/Grant Policy and Procedure Manual, VI C (3) by adding item g to define the procedure for determining financial need for students continuing in the Tuition Assistance Plan (TAP) as follows:

> A "financial need" base year maximum, which is the maximum allowable average income for the student to qualify at the time of initial application, is set for each new applicant. The student will continue to be found in financial need as long as the family's most current two year average adjusted gross income does not exceed the base year maximum. In the event that the family size were to increase due to an additional birth in the family or the applicant's family status changes from dependent to independent, the base year maximum would be recomputed based on the criteria of an initial applicant.

Jack L. Guinn
Executive Director

RULE

Department of Employment and Training
Office of Worker's Compensation

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 and under the authority of

R.S. 23:1291(2), the Louisiana Department of Employment and Training, Office of Worker's Compensation, hereby repromulgates and readopts rules to implement procedures for Rehabilitation Services to assist employers and employees by establishing guidelines for the rehabilitation of the occupationally disabled employee.

The purposes of this rule are to coordinate an efficient program to rehabilitate injured employees and to assure timely delivery of the services necessary to restore the occupationally disabled employee to optimum vocational well-being.

RULE

Title 40
LABOR AND EMPLOYMENT
Part I. Worker's Compensation Administration
Chapter 7. Rehabilitation Services

§701. Purpose

A. The purpose of this section of administrative rule is to implement the provisions of Section 1226 of Subpart B of Chapter 10, Revised Statute 23 and establish guidelines for the rehabilitation of the occupationally disabled employee.

B. The purpose of the Rehabilitation Program is to coordinate and assure the most efficient and timely delivery of the multiple services often necessary to restore the occupationally disabled employee to employment as soon as possible after the injury.

C. There are two major overlapping and interrelated components of the rehabilitation process:

1. vocational restorative services; and
2. re-employment services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:307 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§703. Statutory Requirements

A. §1226(A) requires that when an employee has suffered an injury covered by Chapter 10, R.S. 23 which precludes the employee from earning wages equal to wages earned prior to the injury, the employee shall be entitled to prompt rehabilitation services provided by the carrier/employer.

B. §1226(B) requires that in considering the goal of returning a disabled worker to work with a minimum of retraining, the first appropriate option listed therein is to be chosen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§705. Definitions

For purposes of this Section the following definitions apply:

A. *Rehabilitation* - The restoration of an occupationally injured or diseased employee to employment as soon as possible after the injury.

B. *Rehabilitation Services* - Vocational and/or re-employment services necessary to restore an occupationally disabled employee, as nearly as possible, to his/her pre-injury status.

C. *Vocational Restorative Services* - Vocational services needed to restore the occupationally disabled employee to his/her pre-injury employment or if that is not possible to that which he/she enjoyed prior to the occupational injury or disease. Such services include but are not limited to, the following: psychological and vocational evaluations, counseling and training services.

D. *Re-employment Services* - Services used to re-employ the occupationally disabled employee in a suitable, gainful occupation as adjusted by his/her physical and vocational ability at that time.

E. *Evaluation* - Any testing, analysis or assessment of the occupationally disabled employee's physical and/or vocational capabilities used to determine the need for and practicability of rehabilitation services to restore the employee to gainful employment.

F. *Suitable Employment* - Suitable Employment is employment or self-employment, after rehabilitation which is reasonably attainable and which offers an opportunity to restore the individual as soon as practical and nearly as possible to his average earnings at the time of this injury including any sheltered employment, odd-lot or employment while working in pain.

G. *State and Federal Agencies* - Those agencies which provide vocational education paid for with tax money.

H. *Private Agencies* - Companies which provide vocational rehabilitation services for a fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§707. Responsibility to Provide Service

It is the responsibility of the carrier/employer to select a vocational counselor to evaluate and assist the employee in his job placement and/or vocational training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§709. Use of Resources

The carrier/employer may utilize programs provided by state and federal agencies for rehabilitation services when conveniently available or may utilize any public or private agency cooperating with such state and federal agencies. In the absence of such programs, the carrier/employer shall provide rehabilitation services with available private agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department

of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§711. Claims

A. A rehabilitation dispute or claim can be filed on form LDET-WC-1005 by the employee, employer or carrier when rehabilitation services are not voluntarily offered or accepted. The hearing officer may consider written vocational rehabilitation evaluations and plans prepared by a private or public rehabilitation provider or counselor and/or may refer the employee to a qualified physician and/or approved facility, individual, institution or organization for the evaluation of the practicality, advisability and necessity of rehabilitation services to restore the employee to suitable gainful employment. Any evaluation ordered by the hearing officer shall be completed in 45 days from the receipt of the referral from the hearing officer, with the expense of such evaluation to be borne by the employer/carrier.

B. If rehabilitation services are deemed practical and advisable, they shall be ordered at the expense of the carrier/employer subject to the reimbursement schedule for rehabilitation services promulgated at the time of the filing of the claim or dispute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§713. Adjudication by Hearing Officer

Prior to the hearing officer finding that an occupationally disabled employee is permanently and totally disabled, the hearing officer shall determine whether there is reasonable probability that, with appropriate rehabilitation services which may include training and/or education, the occupationally disabled employee can achieve suitable gainful employment and whether it is in the best interest of such individual to undertake such rehabilitation services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§715. Duration

When it appears that appropriate training and/or education is necessary and desirable to restore the occupationally disabled employee to suitable gainful employment, the employee shall be entitled to 26 weeks of training and/or education and an additional 26 weeks if deemed necessary and proper by the hearing officer. However, no carrier/employer shall be precluded from continuing such rehabilitation beyond such period on a voluntary basis. An occupationally disabled employee must request and begin rehabilitation within two years from the date of termination of temporary total disability as determined by the treating physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§717. Cost of Rehabilitation Services and Supplies

When appropriate training and/or education is deemed necessary, the rehabilitation services provided shall include the cost of training, tuition, books, tools and/or equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§719. Location of Services

If rehabilitation requires residence at or near the facility or institution away from the occupationally disabled employee's customary residence, reasonable costs of his/her board, lodging and travel shall be paid for by the employer/carrier. A retraining program shall be provided at facilities within the state when such facilities are available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§721. Penalty for Refusal

A. Although an occupationally disabled employee is entitled to rehabilitation as a right or benefit, when he/she agrees to a rehabilitation program, dedication to the completion of that program is expected.

B. Demonstration of a lack of responsibility by the occupationally disabled employee in following through with the rehabilitation plan or refusal to accept rehabilitation as deemed necessary by the hearing officer shall result in a 50 percent reduction in weekly compensation, including supplemental earnings benefits pursuant to R.S. 23:1221(3), for each documented week of the period of refusal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§723. Payment of Temporary Disability

Temporary disability benefits paid pursuant to R.S. 23:1221(1) shall include such period as may be reasonably required for training in the use of artificial members and appliances and shall include such period as the employee may be receiving training or education under a rehabilitation program approved by the hearing officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department

of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:308 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

§725. Approved List of Rehabilitation Providers

The Office of Worker's Compensation Administration will maintain a current listing of rehabilitation counselors licensed to practice rehabilitation services in the state of Louisiana. This listing will be available upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1226.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Worker's Compensation Administration, LR 11:778 (August 1985), repromulgated LR 13:309 (May 1987), repromulgated by the Department of Employment and Training, Office of Worker's Compensation Administration, LR 18: (February 1992).

Alvin J. Walsh
Director

RULE

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

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted LAC 33:III.4891, Standards of Performance for Polymeric Coating of Supporting Substrates Facilities (Subpart VVV) (AQ41).

This rule is identical to 40 CFR 60, Subpart VVV with changes to the outline and internal references to match the Louisiana Administrative Code (LAC). It does not deviate from the CFR except for the format. This rule defines the volatile organic compound (VOC) emission standards for polymeric coating of supporting substrates facilities, compliance provisions, monitoring requirements, test methods and procedures, alternate methods of compliance, and recordkeeping and reporting requirements. See *Federal Register* dated September 11, 1989, 54 FR 37534, number 174.

Copies of this rule are available at the Office of the State Register, 1051 Riverside North, Capitol Annex Building, 5th Floor, Room 512, Baton Rouge, LA 70802.

James B. Thompson
Assistant Secretary

RULE

Office of Air Quality and Radiation Protection
Air Quality Division

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted LAC 33:III.3155 (AQ32).

This rule is identical to 40 CFR 60, Subpart Dc, with changes to the outline and internal references to match the Louisiana Administrative Code (LAC). It does not deviate from the CFR except for the format. The rule defines the emission standards for small industrial-commercial-institutional steam generating units (equal to or less than 29 MW, but equal to or greater than 2.9 MW) monitoring requirements, test methods and procedures, and recordkeeping and reporting requirements. See *Federal Register* dated September 12, 1990, 55 FR 37683, No. 177.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 31. Standards of Performance for New Stationary Sources

§3155. Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units (Subpart Dc)

A. Applicability

The affected facility to which this Section applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and that has a maximum design heat input capacity of 29 megawatts (MW) (100 million Btu per hour [Btu/hr]) or less, but greater than or equal to 2.9 MW (10 million Btu/hr).

B. Definitions. As used in this Section, all terms not defined herein shall have the meaning given them in §3103 of this Chapter.

Annual Capacity Factor-the ratio between the actual heat input to a steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

Coal-all solid fuels classified as anthracite; bituminous; subbituminous or lignite by the American Society for Testing and Materials in ASTM D388-77, ''Standard Specification for Classification of Coals by Rank''; coal refuse; and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures are included in this definition for the purposes of this Section.

Coal Refuse-any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound, [Btu/lb]) on a dry basis.

Cogeneration Steam Generating Unit-a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

Combined Cycle System-a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

Conventional Technology-wet flue gas desulfurization

technology, dry flue gas desulfurization technology, atmospheric fluidized bed combustion technology, and oil hydrodesulfurization technology.

Distillate Oil-fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396-78, "Standard Specification for Fuel Oils."

Dry Flue Gas Desulfurization Technology-a sulfur dioxide (SO_2) control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline reagents used in dry flue gas desulfurization systems include, but are not limited to, lime and sodium compounds.

Duct Burner-a device that combusts fuel and that is placed in the exhaust duct from another source (such as a stationary gas turbine, internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a steam generating unit.

Emerging Technology-any SO_2 control system that is not defined as a conventional technology under this Subsection, and for which the owner or operator of the affected facility has received approval from the administrative authority* to operate as an emerging technology under Subsection I.1.d of this Section.

Fluidized Bed Combustion Technology-a device wherein fuel is distributed onto a bed (or series of beds) of limestone aggregate (or other sorbent materials) for combustion, and these materials are forced upward in the device by the flow of combustion air and the gaseous products of combustion. Fluidized bed combustion technology includes, but is not limited to, bubbling bed units and circulating bed units.

Fuel Pretreatment-a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

Heat Input-heat derived from combustion of fuel in a steam generating unit and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and kilns).

Heat Transfer Medium-any material that is used to transfer heat from one point to another point.

Maximum Design Heat Input Capacity-the ability of a steam generating unit to combust a stated maximum amount of fuel (or combination of fuels) on a steady state basis as determined by the physical design and characteristics of the steam generating unit.

Natural Gas-

a. a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

b. liquefied petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835-86, "Standard Specification for Liquefied Petroleum Gases."

Oil-crude oil or petroleum, or a liquid fuel derived from crude oil or petroleum, including distillate oil and residual oil.

Potential Sulfur Dioxide Emission Rate-the theoretical SO_2 emissions (nanograms per joule [ng/J], or pounds per million Btu [lb/million Btu] heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

Process Heater-a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

Residual Oil-crude oil, fuel oil that does not comply with the specifications under the definition of distillate oil, and all fuel oil numbers 4, 5, and 6, as defined by the American Society for Testing and Materials in ASTM D396-78, "Standard Specification for Fuel Oils."

State or Federally Enforceable-all limitations and conditions that are enforceable by the administrative authority*, including the requirements of LAC 33:III or 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, and any permit requirements established under LAC 33:III, 40 CFR 52.21, or under 40 CFR 51.18 and 40 CFR 51.24.

Steam Generating Unit-a device that combusts any fuel and produces steam or heats water or any other heat transfer medium. This term includes any duct burner that combusts fuel and is part of a combined cycle system. This term does not include process heaters as defined in this Subsection.

Steam Generating Unit Operating Day-a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

Wet Flue Gas Desulfurization Technology-an SO_2 control system that is located between the steam generating unit and the exhaust vent or stack, and that removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition includes devices where the liquid material is subsequently converted to another form. Alkaline reagents used in wet flue gas desulfurization systems include, but are not limited to, lime, limestone, and sodium compounds.

Wet Scrubber System-any emission control device that mixes an aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of particulate matter (PM) or SO_2.

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

C. Standard for Sulfur Dioxide

1. Except as provided in Subsections C.2, 3, and 5 of this Section, on and after the date on which the initial performance test is completed or required to be completed under §3115 of this Chapter, whichever date comes first, the owner or operator of an affected facility that combusts only coal shall neither:

a. cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 10 percent (0.10) of the potential SO_2 emission rate (90 percent reduction); nor

b. cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/million Btu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in this Paragraph

and the emission limit is determined pursuant to Subsection C.5.b of this Section.

2. Except as provided in Subsection C.3 and 5 of this Section, on and after the date on which the initial performance test is completed under §3115 of this Chapter, whichever date comes first, the owner or operator of an affected facility that:

a. combusts coal refuse alone in a fluidized bed combustion steam generating unit shall neither:

i. cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 20 percent (0.20) of the potential SO_2 emission rate (80 percent reduction); nor

ii. cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/million Btu) heat input. If coal is fired with coal refuse, the affected facility is subject to Subsection C.1 of this Section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to the 90 percent SO_2 reduction requirement specified in Subsection C.1 of this Section and the emission limit determined pursuant to Subsection C.5.b of this Section;

b. combusts only coal and that uses an emerging technology for the control of SO_2 emissions shall neither:

i. cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 50 percent (0.50) of the potential SO_2 emission rate (50 percent reduction); nor

ii. cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 260 ng/J (0.60 lb/million Btu) heat input. If coal is combusted with other fuels, the affected facility is subject to the 50 percent SO_2 reduction requirement specified in this Subsection and the emission limit determined pursuant to Subsection C.5.b of this Section.

3. On and after the date on which the initial performance test is completed or required to be completed under §3115 of this Chapter, whichever date comes first, no owner or operator of an affected facility that combusts coal, alone or in combination with any other fuel, and is listed in Subsection C.3.a, b, or c of this Section shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the emission limit determined pursuant to Subsection C.5.b of this Section. Percent reduction requirements are not applicable to affected facilities under this Paragraph.

a. Affected facilities that have a heat input capacity of 22 MW (75 million Btu/hr) or less.

b. Affected facilities that have an annual capacity for coal of 55 percent (0.55) or less and are subject to a state or federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for coal of 55 percent (0.55) or less.

c. Affected facilities that combust coal in a duct burner as part of a combined cycle system where 30 percent (0.30) or less of the heat entering the steam generating unit is from combustion of coal in the duct burner and 70 percent (0.70) or more of the heat entering the steam generating unit is from exhaust gases entering the duct burner.

4. On and after the date on which the initial performance test is completed or required to be completed under §3115 of this Chapter, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 215 ng/J (0.50 lb/million Btu) heat input or, as an alternative, no owner or operator of an affected facility that combusts oil shall combust oil in the affected facility that contains greater than 0.5 weight percent sulfur. The percent reduction requirements are not applicable to affected facilities under this Paragraph.

5. On and after the date on which the initial performance test is completed or required to be completed under §3115 of this Chapter, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, or coal and oil with any other fuel shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the following:

a. the percent of potential SO_2 emission rate required under Subsection C.1 or C.2.b of this Section, as applicable, for any affected facility that:

i. combusts coal in combination with any other fuel;

ii. has a heat input capacity greater than 22 MW (75 million Btu/hr); and

iii. has an annual capacity factor for coal greater than 55 percent (0.55);

b. the emission limit determined according to the following formula for any affected facility that combusts coal, oil, or coal and oil with any other fuel:

$$E_s = \frac{(K_a H_a + K_b H_b + K_c H_c)}{(H_a + H_b + H_c)}$$

where:

E_s = the SO_2 emission limit, expressed in ng/J or lb/million Btu heat input

K_a = 520 ng/J (1.2 lb/million Btu)

K_b = 260 ng/J (0.60 lb/million Btu)

K_c = 215 ng/J (0.50 lb/million Btu)

H_a = the heat input from the combustion of coal, except coal combusted in an affected facility subject to Subsection C.2.b of this Section, in Joules (J) [million Btu]

H_b = the heat input from the combustion of coal in an affected facility subject to Subsection C.2.b of this Section, in J (million Btu)

H_c = the heat input from the combustion of oil, in J (million Btu)

6. Reduction in the potential SO_2 emission rate through fuel pretreatment is not credited toward the percent reduction requirement under Subsection C.2.b of this Section unless:

a. fuel pretreatment results in a 50 percent (0.50) or greater reduction in the potential SO_2 emission rate; and

b. emissions from the pretreated fuel (without either combustion or postcombustion SO_2 control) are equal to or less than the emission limits specified under Subsection C.2.b of this Section.

7. Except as provided in Subsection C.8 of this Section, compliance with the percent reduction requirements, fuel oil sulfur limits, and emission limits of this Section shall be determined on a 30-day rolling average basis.

8. For affected facilities listed under Subsection C.8.a, b, or c of this Section, compliance with the emission limits or fuel oil sulfur limits under this Section may be determined based on a certification from the fuel supplier, as described

under Subsection I.6.a, b, or c of this Section, as applicable:

a. distillate oil-fired affected facilities with heat input capacities between 2.9 and 29 MW (10 and 100 million Btu/hr);

b. residual oil-fired affected facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr);

c. coal-fired facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 million Btu/hr).

9. The SO_2 emission limits, fuel oil sulfur limits, and percent reduction requirements under this Subsection apply at all times, including periods of start-up, shutdown, and malfunction.

10. Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this Subsection. No credit is provided for the heat input to the affected facility from wood or other fuels or for heat derived from exhaust gases from other sources, such as stationary gas turbines, internal combustion engines, and kilns.

D. Standard for Particulate Matter

1. On and after the date on which the initial performance test is completed or required to be completed under §3115 of this Chapter, whichever date comes first, no owner or operator of an affected facility that combusts coal or combusts mixtures of coal with other fuels and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emission limits:

a. 22 ng/J (0.05 lb/million Btu) heat input if the affected facility combusts only coal, or combusts coal with other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less;

b. 43 ng/J (0.10 lb/million Btu) heat input if the affected facility combusts coal with other fuels, has an annual capacity factor for the other fuels greater than 10 percent (0.10), and is subject to a state or federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

2. On and after the date on which the initial performance test is completed or required to be completed under §3115 of this Chapter, whichever date comes first, no owner or operator of an affected facility that combusts wood or combusts mixtures of wood with other fuels (except coal) and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain PM in excess of the following emissions limits:

a. 43 ng/J (0.10 lb/million Btu) heat input if the affected facility has an annual capacity factor for wood greater than 30 percent (0.30); or

b. 130 ng/J (0.30 lb/million Btu) heat input if the affected facility has an annual capacity factor for wood of 30 percent (0.30) or less and is subject to a state or federally enforceable requirement limiting operation of the affected facility to an annual capacity factor for wood of 30 percent (0.30) or less.

3. On and after the date on which the initial performance test is completed or required to be completed under §3115 of this Chapter, whichever date comes first, no owner or operator of an affected facility that combusts coal, wood, or oil and has a heat input capacity of 8.7 MW (30 million Btu/hr) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that exhibit greater than 20 percent opacity (six-minute average), except for one six-minute period per hour of not more than 27 percent opacity.

4. The PM and opacity standards under this Section apply at all times, except during periods of start-up, shutdown, or malfunction.

E. Compliance and Performance Test Methods and Procedures for Sulfur Dioxide

1. Except as provided in Subsection E.7 and 8 of this Section and in §3115.B of this Chapter, performance tests required under §3115 of this Chapter shall be conducted following the procedures specified in Subsection E.2, 3, 4, 5, and 6 of this Section, as applicable. Section 3115.F of this Chapter does not apply to this Section. The 30-day notice required in §3115.D of this Chapter applies only to the initial performance test unless otherwise specified by the administrative authority.

2. The initial performance test required under §3115 of this Chapter shall be conducted over 30 consecutive operating days of the steam generating unit. Compliance with the percent reduction requirements and SO_2 emission limits under Subsection C of this Section shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after the initial start-up of the facility. The steam generating unit load during the 30-day period does not have to be the maximum design heat input capacity, but must be representative of future operating conditions.

3. After the initial performance test required under Subsection E.2 of this Section and §3115 of this Chapter, compliance with the percent reduction requirements and SO_2 emission limits under Subsection C of this Section is based on the average percent reduction and the average SO_2 emission rates for 30 consecutive steam generating unit operating days. A separate performance test is completed at the end of each steam generating unit operating day, and a new 30-day average percent reduction and SO_2 emission rate are calculated to show compliance with the standard.

4. If only coal, only oil, or a mixture of coal and oil is combusted in an affected facility, the procedures in Method 19 (LAC 33:III.6073) are used to determine the hourly SO_2 emission rate (E_{ho}) and the 30-day average SO_2 emission rate (E_{so}). The hourly averages used to compute the 30-day averages are obtained from the continuous emission monitoring system (CEMS). Method 19 (LAC 33:III.6073) shall be used to calculate E_{so} when using daily fuel sampling or Method 6B (LAC 33:III.6029).

5. If coal, oil, or coal and oil are combusted with other fuels:

a. an adjusted E_{ho} ($E_{ho}°$) is used in Equation 19-19 of Method 19 (LAC 33:III.6073) to compute the adjusted E_{so} ($E_{so}°$). The $E_{ho}°$ is computed using the following formula:

$$E_{ho}° = \frac{[E_{ho} - E_w (1 - X_k)]}{X_k}$$

where:

$E_{ho}°$ = the adjusted E_{ho}, ng/J (lb/million Btu)

E_{ho} = the hourly SO_2 emission rate, ng/J (lb/million Btu)

E_w = the SO_2 concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 9 (LAC 33:III.6047), ng/J (lb/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure E_w if the owner or operator elects to assume E_w = 0

X_k = the fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19 (LAC 33:III.6073)

b. the owner or operator of an affected facility that qualifies under the provisions of Subsection C.3 or 4 of this Section [where percent reduction is not required] does not have to measure the parameters E_w or X_k if the owner or operator of the affected facility elects to measure emission rates of the coal or oil using the fuel sampling and analysis procedures under Method 19 (LAC 33:III.6073).

6. Affected facilities subject to the percent reduction requirements under Subsection C.1 or 2 of this Section shall determine compliance with the SO_2 emission limits under Subsection C of this Section pursuant to Subsection E.4 or 5 of this Section, and shall determine compliance with the percent reduction requirements using the following procedures:

a. If only coal is combusted, the percent of potential SO_2 emission rate is computed using the following formula:

$$\%P_s = 100\left(\frac{1 - \%R_g}{100}\right)\left(\frac{1 - \%R_f}{100}\right)$$

where:

$\%P_s$ = the percent of potential SO_2 emission rate, in percent

$\%R_g$ = the SO_2 removal efficiency of the control device as determined by Method 19 (LAC 33:III.6073), in percent

$\%R_f$ = the SO_2 removal efficiency of fuel pretreatment as determined by Method 19 (LAC 33:III.6073), in percent

b. if coal, oil, or coal and oil are combusted with other fuels, the same procedures required in Subsection E.6.a of this Section are used, except as provided for in the following:

i. to compute the $\%P_s$, an adjusted $\%R_g$ ($\%R_g°$) is computed from $E_{ao}°$ from Subsection E.5.a of this Section and an adjusted average SO_2 inlet rate ($E_{ai}°$) using the following formula:

$$\%R_g° = \left[100\ \frac{1.0 - E_{ao}°}{(E_{aj})°}\right]$$

where:

$\%R_g°$ = the adjusted $\%R_g$, in percent

$E_{go}°$ = the adjusted E_{ao}, ng/J (lb/million Btu)

$E_{ai}°$ = the adjusted average SO_2 inlet rate, ng/J (lb/million Btu)

ii. to compute $E_{ai}°$, an adjusted hourly SO_2 inlet rate ($Eh_i°$) is used. The $E_{hi}°$ is computed using the following formula:

$$E_{hi}° = \frac{[E_{hi} - E_w\ (1 - X_k)]}{X_k}$$

where:

$E_{hi}°$ = the adjusted E_{hi}, ng/J (lb/million Btu)

E_{hi} = the hourly SO_2 inlet rate, ng/J (lb/million Btu)

E_w = the SO_2 concentration in fuels other than coal and oil combusted in the affected facility, as determined by fuel sampling and analysis procedures in Method 19 (LAC 33:III.6073), ng/J (lb/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted. The owner or operator does not have to measure E_w if the owner or operator elects to assume E_w = 0

X_k = the fraction of the total heat input from fuel combustion derived from coal and oil, as determined by applicable procedures in Method 19 (LAC 33:III.6073)

7. For oil-fired affected facilities where the owner or operator seeks to demonstrate compliance with the fuel oil sulfur limits under Subsection C of this Section based on shipment fuel sampling, the initial performance test shall consist of sampling and analyzing the oil in the initial tank of oil to be fired in the steam generating unit to demonstrate that the oil contains 0.5 weight percent sulfur or less. Thereafter, the owner or operator of the affected facility shall sample the oil in the fuel tank after each new shipment of oil is received as described under Subsection G.4.b of this Section.

8. For affected facilities subject to Subsection C.3.a, b, or c of this Section where the owner or operator seeks to demonstrate compliance with the SO_2 standards based on fuel supplier certification, the performance test shall consist of the certification and the certification from the fuel supplier, as described under Subsection I.6.a, b, or c of this Section, as applicable.

9. The owner or operator of an affected facility seeking to demonstrate compliance with the SO_2 standards under Subsection C.3.b of this Section shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour averaged firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

10. The owner or operator of an affected facility shall use all valid SO_2 emissions data in calculating $\%P_s$ and E_{ho} under Subsection E.4, 5, or 6 of this Section, as applicable, whether or not the minimum emissions data requirements under Subsection G.6 of this Section are achieved. All valid emissions data, including valid data collected during periods of start-up, shutdown, and malfunction, shall be used in calculating $\%P_s$ or E_{ho} pursuant to Subsection E.4, 5, or 6 of this Section, as applicable.

F. Compliance and Performance Test Methods and Procedures for Particulate Matter

1. The owner or operator of an affected facility subject to the PM and/or opacity standards under Subsection D of this Section shall conduct an initial performance test as required under §3115 of this Chapter, and shall conduct subsequent performance tests as requested by the administrative authority, to determine compliance with the standards using

the following procedures and reference methods:

a. Method 1 (LAC 33:III.6001) shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dry standard cubic meters (dscm) (60 dry standard cubic feet [dscf]) except that smaller sampling times or volumes may be approved by the administrative authority when necessitated by process variables or other factors;

b. Method 3 (LAC 33:III.6009) shall be used for gas analysis when applying Method 5 (LAC 33:III.6015), Method 5B, or Method 17 (LAC 33:III.6069);

c. Method 5 (LAC 33:III.6015), Method 5B, or Method 17 (LAC 33:III.6069) shall be used to measure the concentration of PM as follows:

i. Method 5 (LAC 33:III.6015) may be used only at affected facilities without wet scrubber systems;

ii. Method 17 (LAC 33:III.6069) may be used at affected facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160°C (320°F). The procedures of Subsection B.1 and 3 of Method 5B may be used in Method 17 (LAC 33:III.6069) only if Method 17 is used in conjunction with a wet scrubber system. Method 17 (LAC 33:III.6069) shall not be used in conjunction with a wet scrubber system if the effluent is saturated or laden with water droplets;

iii. Method 5B may be used in conjunction with a wet scrubber system;

d. for Method 5 (LAC 33:III.6015) or Method 5B, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160°C (320°F);

e. for determination of PM emissions, an oxygen or carbon dioxide measurement shall be obtained simultaneously with each run of Method 5 (LAC 33:III.6015), Method 5B, or Method 17 (LAC 33:III.6069) by traversing the duct at the same sampling location;

f. for each run using Method 5 (LAC 33:III.6015), Method 5B, or Method 17 (LAC 33:III.6069), the emission rates expressed in ng/J (lb/million Btu) heat input shall be determined using:

i. the oxygen or carbon dioxide measurements and PM measurements obtained under this Section;

ii. the dry basis F-factor; and

iii. the dry basis emission rate calculation procedure contained in Method 19 (LAC 33:III.6073).

g. Method 9 (LAC 33:III.6047) (six-minute average of 24 observations) shall be used for determining the opacity of stack emissions.

2. The owner or operator of an affected facility seeking to demonstrate compliance with the PM standards under Subsection D.2.b of this Section shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the steam generating unit at this capacity for 24 hours. This demonstration shall be made during the initial performance test, and a subsequent demonstration may be requested at any other time. If the demonstrated 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity stated by the manufacturer of the affected facility, the demonstrated 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility; otherwise, the maximum design heat input capacity provided by the manufacturer shall be used.

G. Emission Monitoring for Sulfur Dioxide

1. Except as provided in Subsection G.4 and 5 of this Section, the owner or operator of an affected facility subject to the SO_2 emission limits under Subsection C of this Section shall install, calibrate, maintain, and operate a CEMS for measuring SO_2 concentrations and either oxygen or carbon dioxide concentrations at the outlet of the SO_2 control device (or the outlet of the steam generating unit if no SO_2 control device is used), and shall record the output of the system. The owner or operator of an affected facility subject to the percent reduction requirements under Subsection C of this Section shall measure SO_2 concentrations and either oxygen or carbon dioxide concentrations at both the inlet and outlet of the SO_2 control device.

2. The one-hour average SO_2 emission rates measured by a CEM shall be expressed in ng/J or lb/million Btu heat input and shall be used to calculate the average emission rates under Subsection C of this Section. Each one-hour average SO_2 emission rate must be based on at least 30 minutes of operation and include at least two data points representing two 15-minute periods. Hourly SO_2 emission rates are not calculated if the affected facility is operated less than 30 minutes in a one-hour period and are not counted toward determination of a steam generating unit operating day.

3. The procedures under §3125 of this Chapter shall be followed for installation, evaluation, and operation of the CEMS.

a. All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 in Chapter 61 of this Part.

b. Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with LAC 33:III.Chapter 64.

c. For affected facilities subject to the percent reduction requirements under Subsection C of this Section, the span value of the SO_2 CEMS at the inlet to the SO_2 control device shall be 125 percent of the maximum estimated hourly potential SO_2 emission rate of the fuel combusted, and the span value of the SO_2 CEMS at the outlet from the SO_2 control device shall be 50 percent of the maximum estimated hourly potential SO_2 emission rate of the fuel combusted.

d. For affected facilities that are not subject to the percent reduction requirements of Subsection C of this Section, the span value of the SO_2 CEMS at the outlet from the SO_2 control device (or outlet of the steam generating unit if no SO_2 control device is used) shall be 125 percent of the maximum estimated hourly potential SO_2 emission rate of the fuel combusted.

4. As an alternative to operating a CEMS at the inlet to the SO_2 control device (or outlet of the steam generating unit if no SO_2 control device is used) as required under Subsection G.1 of this Section, an owner or operator may elect to determine the average SO_2 emission rate by sampling the fuel prior to combustion. As an alternative to operating a CEM at the outlet from the SO_2 control device (or outlet of the steam generating unit if no SO_2 control device is used) as required under Subsection G.1 of this Section, an owner or operator may elect to determine the average SO_2 emission rate by using Method 6B (LAC 33:III.6029). Fuel sampling shall be conducted pursuant to either Subsection G.4.a or b of this Section. Method 6B (LAC 33:III.6029) shall be conducted pursuant to Subsection G.4.c of this Section.

a. For affected facilities combusting coal or oil, coal or

oil samples shall be collected daily in an as-fired condition at the inlet to the steam generating unit and analyzed for sulfur content and heat content according to Method 19 (LAC 33:III.6073). Method 19 (LAC 33:III.6073) provides procedures for converting these measurements into the format to be used in calculating the average SO_2 input rate.

b. As an alternative fuel sampling procedure for affected facilities combusting oil, oil samples may be collected from the fuel tank for each steam generating unit immediately after the fuel tank is filled and before any oil is combusted. The owner or operator of the affected facility shall analyze the oil sample to determine the sulfur content of the oil. If a partially empty fuel tank is refilled, a new sample and analysis of the fuel in the tank would be required upon filling. Results of the fuel analysis taken after each new shipment of oil is received shall be used as the daily value when calculating the 30-day rolling average until the next shipment is received. If the fuel analysis shows that the sulfur content in the fuel tank is greater than 0.5 weight percent sulfur, the owner or operator shall ensure that the sulfur content of subsequent oil shipments is low enough to cause the 30-day rolling average sulfur content to be 0.5 weight percent sulfur or less.

c. Method 6B (LAC 33:III.6029) may be used in lieu of CEMS to measure SO_2 at the inlet or outlet of the SO_2 control system. An initial stratification test is required to verify the adequacy of the Method 6B (LAC 33:III.6029) sampling location. The stratification test shall consist of three paired runs of a suitable SO_2 and carbon dioxide measurement train operated at the candidate location and a second similar train operated according to the procedures in Subsection C.2 of this Section and the applicable procedures in Subsection G of Performance Specification 2 (LAC 33:III.6105). Method 6B (LAC 33:III.6029), Method 6A (LAC 33:III.6027), or a combination of Methods 6 (LAC 33:III.6025) and 3 (LAC 33:III.6009) or Methods 6C (LAC 33:III.6031) and 3A (LAC 33:III.6010) are suitable measurement techniques. If Method 6B (LAC 33:III.6029) is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B (LAC 33:III.6029) 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent (0.10).

5. The monitoring requirements of Subsection G.1 and 2 of this Section shall not apply to affected facilities subject to Subsection C.8.a, b, or c of this Section where the owner or operator of the affected facility seeks to demonstrate compliance with the SO_2 standards based on fuel supplier certification, as described under Subsection C.7.a, b, or c of this Section, as applicable.

6. The owner or operator of an affected facility operating a CEMS pursuant to Subsection G.1 of this Section, or conducting as-fired fuel sampling pursuant to Subsection G.4.a of this Section, shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the administrative authority.

H. Emission Monitoring for Particulate Matter

1. The owner or operator of an affected facility combusting coal, residual oil, or wood that is subject to the opacity standards under Subsection D of this Section shall install, calibrate, maintain, and operate a CEMS for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system.

2. All CEMS for measuring opacity shall be operated in accordance with the applicable procedures under Performance Specification 1 (LAC 33:III.6103). The span value of the opacity CEMS shall be between 60 and 80 percent.

I. Reporting and Recordkeeping Requirements

1. The owner or operator of each affected facility shall submit notification of the date of construction or reconstruction, anticipated start-up, and actual start-up, as provided by §3113 of this Chapter. This notification shall include:

a. the design heat input capacity of the affected facility and identification of fuels to be combusted in the affected facility;

b. if applicable, a copy of any enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under Subsection C or D of this Section;

c. the annual capacity factor at which the owner or operator anticipates operating the affected facility based on all fuels fired and based on each individual fuel fired;

d. notification if an emerging technology will be used for controlling SO_2 emissions. The administrative authority* will examine the description of the control device and will determine whether the technology qualifies as an emerging technology. In making this determination, the administrative authority* may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of Subsection C.1 or C.2.a of this Section, unless and until this determination is made by the administrative authority*.

2. The owner or operator of each affected facility subject to the SO_2 emission limits of Subsection C of this Section, or the PM or opacity limits of Subsection C of this Section, shall submit to the administrative authority the performance test data from the initial and any subsequent performance tests and, if applicable, the performance evaluation of the CEMS using the applicable performance specifications in the Division's Source Test Manual.

3. The owner or operator of each coal-fired, residual oil-fired, or wood-fired affected facility subject to the opacity limits under Subsection D.3 of this Section shall submit excess emission reports for any calendar quarter for which there are excess emissions from the affected facility. If there are no excess emissions during the calendar quarter, the owner or operator shall submit a report semiannually stating that no excess emissions occurred during the semiannual reporting period. The initial quarterly report shall be postmarked by the thirtieth day of the third month following the completion of the initial performance test, unless no excess emissions occur during that quarter. The initial semiannual report shall be postmarked by the thirtieth day of the sixth month following the completion of the initial performance test, or following the date of the previous quarterly report, as applicable. Each subsequent quarterly or semiannual report shall be postmarked by the thirtieth day following the end of the reporting period.

4. The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent

reduction requirements under Subsection C of this Section shall submit quarterly reports to the administrative authority. The initial quarterly report shall be postmarked by the thirtieth day of the third month following the completion of the initial performance test. Each subsequent quarterly report shall be postmarked by the thirtieth day following the end of the reporting period.

5. The owner or operator of each affected facility subject to the SO_2 emission limits, fuel oil sulfur limits, or percent reduction requirements under Subsection D of this Section shall keep records and submit quarterly reports as required under Subsection I.4 of this Section, including the following information, as applicable:

a. calendar dates covered in the reporting period;

b. each 30-day average SO_2 emission rate (ng/J or lb/million Btu), or 30-day average sulfur content (weight percent), calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for any noncompliance with the emission standards; and a description of corrective actions taken;

c. each 30-day average percent of potential SO_2 emission rate calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for any noncompliance with the emission standards; and a description of corrective actions taken;

d. identification of any steam generating unit operating days for which SO_2 or diluent (oxygen or carbon dioxide) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and a description of corrective actions taken;

e. identification of any times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and a description of corrective actions taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit;

f. identification of the F factor used in calculations, method of determination, and type of fuel combusted;

g. identification of whether averages have been obtained based on CEMS rather than manual sampling methods;

h. if a CEMS is used, identification of any times when the pollutant concentration exceeded the full span of the CEMS;

i. if a CEMS is used, description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specifications 2 or 3 (Division's Source Test Manual);

j. if a CEMS is used, results of daily CEMS drift tests and quarterly accuracy assessments as required under LAC 33:III.Chapter 64;

k. if fuel supplier certification is used to demonstrate compliance, records of fuel supplier certification as described under Subsection I.6.a, b, or c of this Section, as applicable. In addition to records of fuel supplier certifications, the quarterly report shall include a certified statement signed by the owner or operator of the affected facility that the records of fuel supplier certifications submitted represent all of the fuel combusted during the quarter.

6. Fuel supplier certification shall include the following information:

a. for distillate oil:

i. the name of the oil supplier; and

ii. a statement from the oil supplier that the oil complies with the specifications under the definition of distillate oil in Subsection B of this Section.

b. for residual oil:

i. the name of the oil supplier;

ii. the location of the oil when the sample was drawn for analysis to determine the sulfur content of the oil, specifically including whether the oil was sampled as delivered to the affected facility, or whether the sample was drawn from oil in storage at the oil supplier's or oil refiner's facility, or other location;

iii. the sulfur content of the oil from which the shipment came (or of the shipment itself); and

iv. the method used to determine the sulfur content of the oil.

c. for coal:

i. the name of the coal supplier;

ii. the location of the coal when the sample was collected for analysis to determine the properties of the coal, specifically including whether the coal was sampled as delivered to the affected facility or whether the sample was collected from coal in storage at the mine, at a coal preparation plant, at a coal supplier's facility, or at another location. The certification shall include the name of the coal mine (and coal seam), coal storage facility, or coal preparation plant (where the sample was collected);

iii. the results of the analysis of the coal from which the shipment came (or of the shipment itself) including the sulfur content, moisture content, ash content, and heat content; and

iv. the methods used to determine the properties of the coal.

7. The owner or operator of each affected facility shall record and maintain records of the amounts of each fuel combusted during each day.

8. The owner or operator of each affected facility subject to a state or federally enforceable requirement limiting the annual capacity factor for any fuel or mixture of fuels under Subsection C or D of this Section shall calculate the annual capacity factor individually for each fuel combusted. The annual capacity factor is determined on a 12-month rolling average basis with a new annual capacity factor calculated at the end of the calendar month.

9. All records required under this Section shall be maintained by the owner or operator of the affected facility for a period of two years following the date of such record.

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 18: (February 1992).

James B. Thompson
Assistant Secretary

RULE

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

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has adopted LAC 33:III.4881 (AQ38).

This rule is identical to 40 CFR 60, Subpart QQQ with changes to the outline and internal references to match the Louisiana Administrative Code (LAC). It does not deviate from the CFR except for the format. This rule defines the emission standards for drain systems, oily-water separators, closed vent and control systems, delay restrictions for repair or compliance, alternate standards and how to obtain permission to use alternates, and recordkeeping and reporting requirements. See *Federal Register* dated November 23, 1988, 53 FR 47616, number 226.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 31. Standards of Performance for New Stationary Sources

§4881. Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems (Subpart QQQ)

A. Applicability and Designation of Affected Facility

1. Affected facilities under this Section are designated as follows:

a. the provisions of this Section apply to affected facilities located in petroleum refineries for which construction, modification, or reconstruction is commenced after May 4, 1987;

b. an individual drain system is a separate affected facility;

c. an oil-water separator is a separate affected facility;

d. an aggregate facility is a separate affected facility.

2. Notwithstanding the provisions of LAC 33:III.3127.E.2, the construction or installation of a new individual drain system shall constitute a modification to an affected facility described in Subsection A.1.d of this Section. For purposes of this Paragraph, a new individual drain system shall be limited to all process drains and the first common junction box.

B. Definitions

As used in this Section, all terms not defined herein shall have the meanings given them in LAC 33:III.3103 and in LAC 33:III.111, and the following terms shall have the specific meanings given them.

Active Service—a drain that is receiving refinery wastewater from a process unit that will continuously maintain a water seal.

Aggregate Facility—an individual drain system together with ancillary downstream sewer lines and oil-water separators, down to and including the secondary oil-water separator, as applicable.

Catch Basin—an open basin that serves as a single collection point for storm-water runoff received directly from refinery surfaces and for refinery wastewater from process drains.

Closed Vent System—a system that is not open to the atmosphere and is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from an emission source to a control device.

Completely Closed Drain System—an individual drain system that is not open to the atmosphere and is equipped and operated with a closed vent system and control device complying with the requirements of Subsection G of this Section.

Control Device—an enclosed combustion device, vapor recovery system, or flare.

Fixed Roof—a cover that is mounted to a tank or chamber in a stationary manner and that does not move with fluctuations in wastewater levels.

Floating Roof—a pontoon-type or double-deck-type cover that rests on the liquid surface.

Gas-tight—operated with no detectable emissions.

Individual Drain System—all process drains connected to the first common downstream junction box. The term includes all such drains and common junction box, together with their associated sewer lines and other junction boxes, down to the receiving oil-water separator.

Junction Box—a manhole or other access point to a wastewater sewer system line.

No Detectable Emissions—less than 500 ppm above background levels, as measured by a detection instrument in accordance with Method 21 in the Division's Source Test Manual (LAC 33:III.6077).

Noncontact Cooling Water System—a once-through drain, collection, and treatment system designed and operated for collecting cooling water that does not come into contact with hydrocarbons or oily wastewater and that is not recirculated through a cooling tower.

Oil-water Separator—wastewater treatment equipment used to separate oil from water consisting of a separation tank, which also includes the forebay and other separator basins, skimmers, weirs, grit chambers, and sludge hoppers. Slop oil facilities, including tanks, are included in this term, along with storage vessels and auxiliary equipment located between individual drain systems and the oil-water separator. This term does not include storage vessels or auxiliary equipment that does not come in contact with or store oily wastewater.

Oily Wastewater—wastewater generated during the refinery process that contains oil, emulsified oil, or other hydrocarbons. Oily wastewater originates from a variety of refinery processes including but not limited to cooling water, condensed stripping steam, tank drawoff, and contact process water.

Petroleum—the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Petroleum Refinery—any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through the distillation of petroleum, or through the redistillation of petroleum, cracking, or reforming unfinished petroleum derivatives.

Sewer Line—a lateral, trunk line, branch line, ditch, channel, or other conduit used to convey refinery wastewater to downstream components of a refinery wastewater treatment system. This term does not include buried, below-grade sewer lines.

Slop Oil—the floating oil and solids that accumulate on the surface of an oil-water separator.

Storage Vessel—any tank, reservoir, or container used

for the storage of petroleum liquids, including oily wastewater.

Storm-water Sewer System—a drain and collection system that is designed and operated for the sole purpose of collecting storm water and that is segregated from the process wastewater collection system.

Wastewater System—any component, piece of equipment, or installation that receives, treats, or processes oily wastewater from petroleum refinery process units.

Water Seal Controls—a seal pot, p-leg trap, or other type of trap filled with water that has a design capability to create a water barrier between the sewer system and the atmosphere.

C. Standards: General

1. Each owner or operator subject to the provisions of this Section shall comply with all of the requirements of Subsections C through G, J and K of this Section, except during periods of start-up, shutdown, or malfunction.

2. Compliance with Subsections C through G, J and K of this Section will be determined by review of records and reports, review of performance test results, and inspections using the methods and procedures specified in Subsection N of this Section.

3. Permission to use alternative means of emission limitation to meet the requirements of Subsections D through F of this Section may be granted as provided in Subsection L of this Section.

4. The following applies regarding exclusions:

a. storm-water sewer systems are not subject to the requirements of this Section;

b. ancillary equipment that is physically separate from the wastewater system and does not come in contact with or store oily wastewater is not subject to the requirements of this Section;

c. noncontact cooling water systems are not subject to the requirements of this Section;

d. an owner or operator shall demonstrate compliance with the exclusions in Subsection C.4.a, b, and c of this Section as provided in Subsection O.8, 9, and 10 of this Section.

D. Standards: Individual Drain Systems

1. The following requirements apply to drains:

a. each drain shall be equipped with water seal controls;

b. each drain in active service shall be checked by visual or physical inspection initially and monthly thereafter for indications of low water levels or other conditions that would reduce the effectiveness of the water seal controls;

c. except as provided in Subsection D.1.d of this Section, each drain out of active service shall be checked by visual or physical inspection initially and weekly thereafter for indications of low water levels or other problems that could result in VOC emissions;

d. as an alternative to the requirements in Subsection D.1.c of this Section, if an owner or operator elects to install a tightly sealed cap or plug over a drain that is out of service, inspections shall be conducted initially and semiannually to ensure that caps or plugs are properly installed and in place;

e. whenever low water levels or missing or improperly installed caps or plugs are identified, water shall be added or first efforts at repair shall be made as soon as practicable, but not later than 24 hours after detection, except as provided in Subsection H of this Section.

2. The following requirements apply to junction boxes:

a. junction boxes shall be equipped with a cover and may have an open vent pipe. The vent pipe shall be at least 90 cm (3 ft) in length and shall not exceed 10.2 cm (4 in) in diameter;

b. junction box covers shall have a tight seal around the edge and shall be kept in place at all times, except during inspection and maintenance;

c. junction boxes shall be visually inspected initially and semiannually thereafter to ensure that the cover is in place and to ensure that the cover has a tight seal around the edge;

d. if a broken seal or gap is identified, first effort at repair shall be made as soon as practicable, but not later than 15 calendar days after the broken seal or gap is identified, except as provided in Subsection H of this Section.

3. The following requirements apply to sewer lines:

a. sewer lines shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visual gaps or cracks in joints, seals, or other emission interfaces;

b. the unburied portion of each sewer line shall be visually inspected initially and semiannually thereafter for indication of cracks, gaps, or other problems that could result in VOC emissions;

c. whenever cracks, gaps, or other problems are detected, repairs shall be made as soon as practicable, but not later than 15 calendar days after identification, except as provided in Subsection H of this Section.

4. Except as provided in Subsection D.5 of this Section, each modified or reconstructed individual drain system that has a catch basin in the existing configuration prior to May 4, 1987, shall be exempt from the provisions of this Section.

5. Refinery wastewater routed through new process drains and a new first common downstream junction box, either as part of a new individual drain system or an existing individual drain system, shall not be routed through a downstream catch basin.

E. Standards: Oil-water Separators

1. Each oil-water separator tank, slop oil tank, storage vessel, or other auxiliary equipment subject to the requirements of this Section shall be equipped and operated with a fixed roof that meets the following specifications, except as provided in Subsection E.4 of this Section or in Subsection K of this Section:

a. the fixed roof shall be installed to completely cover the separator tank, slop oil tank, storage vessel, or other auxiliary equipment with no separation between the roof and the wall;

b. the vapor space under a fixed roof shall not be purged unless the vapor is directed to a control device;

c. if the roof has access doors or openings, such doors or openings shall be gasketed, latched, and kept closed at all times during operation of the separator system, except during inspection and maintenance;

d. roof seals, access doors, and other openings shall be checked by visual inspection initially and semiannually thereafter to ensure that no cracks or gaps occur between the roof and wall and that access doors and other openings are closed and gasketed properly;

e. when a broken seal or gasket or other problem is identified, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after it is

identified, except as provided in Subsection H of this Section.

2. Each oil-water separator tank or auxiliary equipment with a design capacity to treat more than 16 liters per second (250 gpm) of refinery wastewater shall, in addition to the requirements in Subsection E.1 of this Section, be equipped and operated with a closed vent system and control device that meet the requirements of Subsection G of this Section, except as provided in Subsection E.3 of this Section or in Subsection K of this Section.

3. The following requirements apply to the specified oil- water separator tanks with fixed roofs:

a. each modified or reconstructed oil-water separator tank with a maximum design capacity to treat less than 38 liters per second (600 gpm) of refinery wastewater that was equipped and operated with a fixed roof covering the entire separator tank or a portion of the separator tank prior to May 4, 1987, shall be exempt from the requirements of Subsection E.2 of this Section, but shall meet the requirements of Subsection E.1 of this Section, or may elect to comply with Subsection E.3.b of this Section.

b. the owner or operator may elect to comply with the requirements of Subsection E.1 of this Section for the existing fixed roof covering a portion of the separator tank and comply with the requirements for floating roofs in Subsection K of this Section for the remainder of the separator tank.

4. Storage vessels, including slop oil tanks and other auxiliary tanks that are subject to the requirements of LAC 33:III.Chapter 31, Subchapter K (Subparts K, Ka, or Kb), are not subject to the requirements of this Section.

5. Slop oil from an oil-water separator tank and oily wastewater from slop oil handling equipment shall be collected, stored, transported, recycled, reused, or disposed of in an enclosed system. Once slop oil is returned to the process unit or is disposed of, it is no longer subject to the requirements of this Section. Equipment used in handling slop oil shall be equipped with a fixed roof meeting the requirements of Subsection E.1 of this Section.

6. Each oil-water separator tank, slop oil tank, storage vessel, or other auxiliary equipment that is required to comply with Subsection E.1 of this Section, and not Subsection E.2 of this Section, may be equipped with a pressure control valve as necessary for proper system operation. The pressure control valve shall be set at the maximum pressure necessary for proper system operation, but such that the valve will not vent continuously.

F. Standards: Aggregate Facility

A new, modified, or reconstructed aggregate facility shall comply with the requirements of Subsections D and E of this Section.

G. Standards: Closed Vent Systems and Control Devices

1. Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.75 seconds at a minimum temperature of 816°C (1,500°F).

2. Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to recover the VOC emissions vented to them with an efficiency of 95 percent or greater.

3. Flares used to comply with this Section shall comply with the requirements of LAC 33:III.3131.

4. Closed vent systems and control devices used to comply with provisions of this Section shall be operated at all times when emissions may be or are being vented to them.

5. The following requirements apply to closed vent systems:

a. closed vent systems shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined during the initial and semiannual inspections by the methods specified in Subsection N of this Section;

b. closed vent systems shall be purged to direct vapor to the control device;

c. a flow indicator shall be installed on a vent stream to a control device to ensure that the vapors are being routed to the device;

d. all gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;

e. when emissions from a closed system are detected, first efforts at repair to eliminate the emissions shall be made as soon as practicable, but not later than 30 calendar days from the date the emissions are detected, except as provided in Subsection H of this Section.

H. Standards: Delay of Repair

1. Delay of repair of facilities that are subject to the provisions of this Section will be allowed if the repair is technically impossible without a complete or partial refinery or process unit shutdown.

2. Repair of such equipment shall occur before the end of the next refinery or process unit shutdown.

I. Standards: Delay of Compliance

1. Delay of compliance of modified individual drain systems with ancillary downstream treatment components will be allowed if compliance with the provisions of this Section cannot be achieved without a refinery or process unit shutdown.

2. Installation of equipment necessary to comply with the provisions of this Section shall occur no later than the next scheduled refinery or process unit shutdown.

J. Alternative Standards for Individual Drain Systems

1. An owner or operator may elect to construct and operate a completely closed drain system.

2. Each completely closed drain system shall be equipped and operated with a closed vent system and control device complying with the requirements of Subsection G of this Section.

3. An owner or operator must notify the administrative authority in the report required in LAC 33:III.3113 that the owner or operator has elected to construct and operate a completely closed drain system.

4. If an owner or operator elects to comply with the provisions of this Section, then the owner or operator does not need to comply with the provisions of Subsection D or L of this Section.

5. The following requirements apply to sewer lines:

a. sewer lines shall not be open to the atmosphere and shall be covered or enclosed in a manner so as to have no visual gaps or cracks in joints, seals, or other emission interfaces;

b. the unburied portion of each sewer line shall be visually inspected initially and semiannually thereafter for indication of cracks, gaps, or other problems that could result in VOC emissions;

c. whenever cracks, gaps, or other problems are de-

tected, repairs shall be made as soon as practicable, but not later than 15 calendar days after identification, except as provided in Subsection H of this Section.

K. Alternative Standards for Oil-water Separators

1. An owner or operator may elect to construct and operate a floating roof on an oil-water separator tank, slop oil tank, storage vessel, or other auxiliary equipment subject to the requirements of this Section that meets the following specifications:

a. each floating roof shall be equipped with a closure device between the wall of the separator and the roof edge. The closure device is to consist of a primary seal and a secondary seal:

i. the primary seal shall be a liquid-mounted seal:

(a). a liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the separator and the floating roof;

(b). the gap width between the primary seal and the separator wall shall not exceed 3.8 cm (1.5 inches) at any point;

(c). the total gap area between the primary seal and the separator wall shall not exceed 67 cm^2/m (3.2 in ^{2}/ft) of separator wall perimeter;

ii. the secondary seal shall be above the primary seal and cover the annular space between the floating roof and the wall of the separator:

(a). the gap width between the secondary seal and the separator wall shall not exceed 1.3 cm (0.5 in.) at any point;

(b). the total gap area between the secondary seal and the separator wall shall not exceed 6.7 cm^2/m (0.32 $in.^2/ft$) of separator wall perimeter;

iii. the maximum gap width and total gap area shall be determined by the methods and procedures specified in Subsection N.4 of this Section:

(a). measurement of primary seal gaps shall be performed within 60 calendar days after initial installation of the floating roof and introduction of refinery wastewater and once every five years thereafter;

(b). measurement of secondary seal gaps shall be performed within 60 calendar days of initial introduction of refinery wastewater and once every year thereafter;

iv. the owner or operator shall make necessary repairs within 30 calendar days of identification of seals not meeting the requirements listed in Subsection K.1.a.i and ii of this Section.

b. except as provided in Subsection K.1.d of this Section, each opening in the roof shall be equipped with a gasketed cover, seal, or lid, which shall be maintained in a closed position at all times, except during inspection and maintenance.

c. the roof shall be floating on the liquid (i.e., off the roof supports) at all times except during abnormal conditions (i.e., low flow rate).

d. the floating roof may be equipped with one or more emergency roof drains for removal of storm water. Each emergency roof drain shall be fitted with a slotted membrane fabric cover that covers at least 90 percent of the drain opening area or a flexible fabric sleeve seal.

e. access doors and other openings shall meet the following requirements:

i. access doors and other openings shall be visually inspected initially and semiannually thereafter to ensure that there is a tight fit around the edges and to identify other problems that could result in VOC emissions;

ii. when a broken seal or gasket on an access door or other opening is identified, it shall be repaired as soon as practicable, but not later than 30 calendar days after it is identified, except as provided in Subsection H of this Section.

2. An owner or operator must notify the administrative authority in the report required by LAC 33:III.3113 that the owner or operator has elected to construct and operate a floating roof under Subsection E.1 of this Section.

3. For portions of the oil-water separator tank where it is infeasible to construct and operate a floating roof, such as the skimmer mechanism and weirs, a fixed roof meeting the requirements of Subsection E.1 of this Section shall be installed.

4. Except as provided in Subsection K.3 of this Section, if an owner or operator elects to comply with the provisions of this Section, then the owner or operator does not need to comply with the provisions of Subsection E or L of this Section applicable to the same facilities.

L. Permission to Use Alternative Means of Emission Limitation

1. If, in the administrative authority's* judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved by the applicable requirements in Subsections C through I of this Section, the administrative authority* will publish in the *Federal Register* a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

2. Any notice under Subsection L.1 of this Section shall be published only after notice and an opportunity for a hearing and public comment.

3. Any person seeking permission under this Section shall collect, verify, and submit to the administrative authority* information showing that the alternative means achieves equivalent emission reductions.

M. Monitoring of Operations

1. Each owner or operator subject to the provisions of this Section shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the administrative authority in writing.

a. where a thermal incinerator is used for VOC emission reduction, a temperature monitoring device equipped with a continuous recorder shall be used to measure the temperature of the gas stream in the combustion zone of the incinerator. The temperature monitoring device shall have an accuracy of one percent of the temperature being measured in °C or ± 0.5 °C (± 1.0°F), whichever is greater;

b. where a catalytic incinerator is used for VOC emission reduction, temperature monitoring devices, each equipped with a continuous recorder, shall be used to measure the temperature in the gas stream immediately before and after the catalyst bed of the incinerator. The temperature monitoring devices shall have an accuracy of one percent of the temperature being measured in °C or ± 0.5°C (± 1.0°F), whichever is greater.

c. where a carbon adsorber is used for VOC emissions reduction, a monitoring device that continuously indi-

cates and records the VOC concentration level or reading of organics in the exhaust gases of the control device outlet gas stream or inlet and outlet gas stream shall be used;

d. where a flare is used for VOC emission reduction, the owner or operator shall comply with the monitoring requirements of LAC 33:III.3131.B.4.b.

2. Where a VOC recovery device other than a carbon adsorber is used to meet the requirements specified in Subsection G.1 of this Section, the owner or operator shall provide to the administrative authority information describing the operation of the control device and the process parameter(s) that would indicate proper operation and maintenance of the device. The administrative authority may request further information and will specify appropriate monitoring procedures or requirements.

3. An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

N. Performance Test Methods and Procedures and Compliance Provisions

1. Before using any equipment installed in compliance with the requirements of Subsections D, E, F, G, J, or K of this Section, the owner or operator shall inspect such equipment for indications of potential emissions, defects, or other problems that may cause the requirements of this Section not to be met. Points of inspection shall include, but are not limited to, seals, flanges, joints, gaskets, hatches, caps, and plugs.

2. The owner or operator of each source that is equipped with a closed vent system and control device as required in Subsection G of this Section (other than a flare) is exempt from LAC 33:III.3115 of the General Provisions and shall use Method 21 (LAC 33:III.6077) to measure the emission concentrations, using 500 ppm as the no-detectable-emission limit. The instrument shall be calibrated each day before using. The calibration gases shall be:

a. zero air (less than 10 ppm of hydrocarbon in air); and

b. a mixture of either methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

3. The owner or operator shall conduct a performance test initially, and at other times as requested by the administrative authority, using the test methods and procedures in LAC 33:III.3131.B.4 to determine compliance of flares.

4. After installing the control equipment required to meet Subsection K.1 of this Section or whenever sources that have ceased to treat refinery wastewater for a period of one year or more are placed back into service, the owner or operator shall determine compliance with the standards in Subsection K.1 of this Section as follows:

a. the maximum gap widths and maximum gap areas between the primary seal and the separator wall and between the secondary seal and the separator wall shall be determined individually within 60 calendar days of the initial installation of the floating roof and introduction of refinery wastewater or 60 calendar days after the equipment is placed back into service using the following procedure when the separator is filled to the design operating level and when the roof is floating off the roof supports:

i. measure seal gaps around the entire perimeter of the separator in each place where a 0.32 cm (0.125 in.) diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the separator and measure the gap width and perimetrical distance of each such location;

ii. the total surface area of each gap described in Subsection N.4.a.i of this Section shall be determined by using probes of various widths to measure accurately the actual distance from the wall to the seal and multiplying each such width by its respective perimetrical distance;

iii. add the gap surface area of each gap location for the primary seal and the secondary seal individually, divide the sum for each seal by the nominal perimeter of the separator basin, and compare each to the maximum gap area as specified in Subsection K of this Section;

b. the gap widths and total gap area shall be determined using the procedure in Subsection N.4.a of this Section according to the following frequency:

i. for primary seals, once every five years; and

ii. for secondary seals, once every year.

O. Recordkeeping Requirements

1. Each owner or operator of a facility subject to the provisions of this Section shall comply with the recordkeeping requirements of this Section. All records shall be retained for a period of two years after being recorded unless otherwise noted.

2. Individual drain systems shall meet the following requirements:

a. for individual drain systems subject to Subsection D of this Section, the location, date, and corrective action shall be recorded for each drain when the water seal is dry or otherwise breached, when a drain cap or plug is missing or improperly installed, or other problem is identified that could result in VOC emissions, as determined during the initial and periodic visual or physical inspection;

b. for junction boxes subject to Subsection D of this Section, the location, date, and corrective action shall be recorded for inspections required by Subsection D.2 of this Section when a broken seal, gap, or other problem is identified that could result in VOC emissions;

c. for sewer lines subject to Subsections D and J.5 of this Section, the location, date, and corrective action shall be recorded for inspections required by Subsections D.3 and J.5 of this Section when a problem is identified that could result in VOC emissions.

3. For oil-water separators subject to Subsection E of this Section, the location, date, and corrective action shall be recorded for inspections required by Subsection E.1 of this Section when a problem is identified that could result in VOC emissions.

4. For closed vent systems subject to Subsection G of this Section and completely closed drain systems subject to Subsection J of this Section, the location, date, and corrective action shall be recorded for inspections required by Subsection G.5 of this Section during which detectable emissions are measured or a problem is identified that could result in VOC emissions.

5. The following records shall be kept when repairs are delayed:

a. if an emission point cannot be repaired or corrected without a process unit shutdown, the anticipated or expected date of a successful repair shall be recorded;

b. the reason for the delay as specified in Subsection

H of this Section shall be recorded in detail if an emission point or equipment problem is not repaired or corrected in the specified amount of time;

c. the signature of the owner or operator (or designee) whose decision it was that repair could not be effected without refinery or process shutdown shall be recorded;

d. the date of successful repair or corrective action shall be recorded.

6. The following records pertaining to design specifications, operation, and maintenance shall be kept:

a. a copy of the design specifications for all equipment used to comply with the provisions of this Section shall be kept for the life of the source in a readily accessible location;

b. the following information pertaining to the design specifications shall be kept:

i. detailed schematics, and piping and instrumentation diagrams; and

ii. the dates and descriptions of any changes in the design specifications.

c. the following information pertaining to the operation and maintenance of closed drain systems and closed vent systems shall be kept in a readily accessible location:

i. documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions shall be kept for the life of the facility. This documentation is to include a general description of the gas streams that enter the control device, including flow and VOC content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If an enclosed combustion device with a minimum residence time of 0.75 seconds and a minimum temperature of 816°C (1,500°F) is used to meet the 95 percent requirement, documentation that those conditions exist is sufficient to meet the requirements of this Clause;

ii. a description of the operating parameter (or parameters) to be monitored to ensure that the control device will be operated in conformance with these standards and the control device's design specifications and an explanation of the criteria used for selection of that parameter (or parameters) shall be kept for the life of the facility;

iii. periods when the closed vent systems and control devices required in Subsections C through I of this Section are not operated as designed, including periods when a flare pilot does not have a flame, shall be recorded and kept for two years after the information is recorded;

iv. dates of start-up and shutdown of the closed vent system and control devices required in Subsections C through I of this Section shall be recorded and kept for two years after the information is recorded;

v. the dates of each measurement of detectable emissions required in Subsections C, D, E, F, G, H, I, J, or K of this Section shall be recorded and kept for two years after the information is recorded;

vi. the background level measured during each detectable emissions measurement shall be recorded and kept for two years after the information is recorded;

vii. the maximum instrument reading measured during each detectable emission measurement shall be recorded and kept for two years after the information is recorded;

viii. each owner or operator of an affected facility that uses a thermal incinerator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the incinerator and records of all three-hour periods of operation during which the average temperature of the gas stream in the combustion zone is more than 28°C (50°F) below the design combustion zone temperature, and shall keep such records for two years after the information is recorded;

ix. each owner or operator of an affected facility that uses a catalytic incinerator shall maintain continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator, records of all three-hour periods of operation during which the average temperature measured before the catalyst bed is more than 28°C (50°F) below the design gas stream temperature, and records of all three-hour periods during which the average temperature difference across the catalyst bed is less than 80 percent of the design temperature difference, and shall keep such records for two years after the information is recorded;

x. each owner or operator of an affected facility that uses a carbon adsorber shall maintain continuous records of the VOC concentration level or reading of organics of the control device outlet gas stream or inlet and outlet gas stream and records of all three-hour periods of operation during which the average VOC concentration level or reading of organics in the exhaust gases, or inlet and outlet gas stream, is more than 20 percent greater than the design exhaust gas concentration level, and shall keep such records for two years after the information is recorded.

7. If an owner or operator elects to install a tightly sealed cap or plug over a drain that is out of active service, the owner or operator shall keep for the life of a facility in a readily accessible location, plans or specifications that indicate the location of such drains.

8. For storm-water sewer systems subject to the exclusion in Subsection C.4.a of this Section, an owner or operator shall keep for the life of the facility in a readily accessible location, plans or specifications that demonstrate that no wastewater from any process units or equipment is directly discharged to the storm-water sewer system.

9. For ancillary equipment subject to the exclusion in Subsection C.4.b of this Section, an owner or operator shall keep for the life of a facility in a readily accessible location, plans or specifications that demonstrate that the ancillary equipment does not come in contact with or store oily wastewater.

10. For noncontact cooling water systems subject to the exclusion in Subsection C.4.c of this Section, an owner or operator shall keep for the life of the facility in a readily accessible location, plans or specifications that demonstrate that the cooling water does not contact hydrocarbons or oily wastewater and is not recirculated through a cooling tower.

P. Reporting Requirements

1. An owner or operator electing to comply with the provisions of Subsections J or K of this Section shall notify the administrative authority of the alternative standard selected in the report required in LAC 33:III.3113.

2. a. each owner or operator of a facility subject to this Section shall submit to the administrative authority within 60 days after initial start-up a certification that the equipment necessary to comply with these standards has been installed and that the required initial inspections or tests of process drains, sewer lines, junction boxes, oil-water separators, and closed vent systems and control devices have been carried out in accordance with these standards. Thereafter, the

owner or operator shall submit to the administrative authority semiannually a certification that all of the required inspections have been carried out in accordance with these standards.

b. each owner or operator of an affected facility that uses a flare shall submit to the administrative authority within 60 days after initial start-up, as required under LAC 33:III.3115.A, a report of the results of the performance test required in Subsection N.3 of this Section.

3. A report that summarizes all inspections when a water seal was dry or otherwise breached, when a drain cap or plug was missing or improperly installed, or when cracks, gaps, or other problems were identified that could result in VOC emissions, including detailed information about the repairs or corrective action taken, shall be submitted initially and semiannually thereafter to the administrative authority.

4. As applicable, a report shall be submitted semiannually to the administrative authority that indicates:

a. each three-hour period of operation during which the average temperature of the gas stream in the combustion zone of a thermal incinerator, as measured by the temperature-monitoring device, is more than 28°C (50°F) below the design combustion zone temperature;

b. each three-hour period of operation during which the average temperature of the gas stream immediately before the catalyst bed of a catalytic incinerator, as measured by the temperature monitoring device, is more than 28°C (50°F) below the design gas stream temperature, and any three-hour period during which the average temperature difference across the catalyst bed (i.e., the difference between the temperatures of the gas stream immediately before and after the catalyst bed), as measured by the temperature-monitoring device, is less than 80 percent of the design temperature difference; or

c. each three-hour period of operation during which the average VOC concentration level or reading of organics in the exhaust gases from a carbon adsorber is more than 20 percent greater than the design exhaust gas concentration level or reading.

5. If compliance with the provisions of this Section is delayed pursuant to Subsection I of this Section, the notification required under LAC 33:III.3113.A.4 shall include the estimated date of the next scheduled refinery or process unit shutdown after the date of notification and the reason why compliance with the standards is technically impossible without a refinery or process unit shutdown.

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 18: (February 1992).

James B. Thompson
Assistant Secretary

RULE

Department of Environmental Quality
Office of Solid and Hazardous Waste
Solid Waste Division

(**Editor's Note:** The following formula, which appeared in the text of a rule [SW03] in the *Louisiana Register*, January, 1992, page 36, is being republished to correct a typographical error.)

Title 33
ENVIRONMENTAL QUALITY
Part VII. Solid Waste
Subpart 2. Recycling

Chapter 103. Recycling and Waste Reduction Rules
§10307. Development of Local Plan

* * *

$$\text{METHOD TWO}$$
$$Z = \frac{X}{Y} \times 100$$

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:35 (January 1992), repromulgated LR 18: (February 1992).

James B. Thompson
Assistant Secretary

RULE

Office of the Governor

Commission on Law Enforcement and Administration of Criminal Justice

Sentencing Commission

(**Editor's Note:** Certain Chapters of rules, appearing on pages 44-47 of the *Louisiana Register,* January, 1992, are being republished to correct typographical errors).

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT
Part IX. Sentencing Commission
Subpart 1. Felony Sentencing Guidelines

The legislature enacted by Acts 1991, Nos. 22, 25, 38, and 138 shall take effect on January 1, 1992 or 30 days after the effective date of the sentencing guidelines, whichever is later. It is in the interest of the state of Louisiana that such implementing legislation take effect on January 1, 1992 and that the sentencing guidelines take effect on January 1, 1992. As currently promulgated, the sentencing guidelines will take effect on January 20, 1992 with the publication of the *Louisiana Register* on that date. Thus, in order to have the guidelines and implementing legislation take effect on January 1, 1992, the emergency rulemaking is necessary.

Therefore, the Louisiana Sentencing Commission has adopted an emergency rule that the guidelines shall take effect on January 1, 1992 and shall remain in effect until final rules are published in the January 20, 1992 issue of the *Louisiana Register.* Copies of the tables in Chapter 4 determining appropriate sentences under the guidelines can be obtained through the Office of the State Register, 1051 Riverside North, Baton Rouge, LA 70802.

Chapter 1. Purpose and Principles
§101. Purpose

A. The purpose of the Louisiana Sentencing Guide-

lines, hereinafter referred to as "guidelines," is to recommend a uniform sanctioning policy which is consistent, proportional, and fair for use by the Louisiana judiciary in felony cases in which the sentencing court must determine the sentence to be imposed.

B. The guidelines do not apply to capital cases, cases punishable by a mandatory sentence of life imprisonment, or misdemeanor cases.

C. The guidelines do not apply to convictions for felony offenses for which no crime seriousness level has been determined. In such cases, the court may be guided by the guideline range for a ranked offense which the court determines to be analogous to the offense of conviction.

D. The guidelines are intended to ensure certainty, uniformity, consistency and proportionality of punishment, fairness to victims, and the protection of society.

E. The guidelines are intended to provide rational and consistent criteria for imposing criminal sanctions in a uniform and proportionate manner.

1. Uniformity in sentencing requires that offenders who are similar with respect to relevant sentencing criteria should receive similar sanctions, and that offenders who are substantially different with respect to relevant sentencing criteria should receive different sanctions.

2. Proportionality in sentencing requires that the severity of the punishment be proportional to the seriousness of the offense of conviction and the severity of the offender's prior criminal history.

F. The guidelines are intended to assist the court in stating for the record the considerations taken into account and the factual basis for imposing sentences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 18:45 (January 1992), repromulgated LR 18: (February 1992).

§103. Sentencing Principles

A. Sentences should be based primarily on the offense of conviction and the offender's prior criminal history. Therefore, those two factors determine the designated sentence range established under the guidelines.

B. The determination of the seriousness of the offense of conviction is based on the elements of the offense of conviction.

C. The severity of sanctions should increase or decrease in proportion to the seriousness of the offense of conviction and the severity of the offender's prior criminal history.

D. The guidelines are based on the typical case and the designated sentence ranges provided in the Sentencing Guidelines Grid should be appropriate for cases in which aggravating and mitigating circumstances are not present.

E. While commitment to a term of imprisonment with or without hard labor is the most severe non-capital sanction that can follow conviction for a felony offense, there are other significant sanctions available to the sentencing court which lawfully can be imposed in conjunction with, or independent of, a term of imprisonment. These criminal penalties include home incarceration, periodic incarceration, community service, and various conditions of supervised probation.

F. Sentences shall not be determined on the basis of the race, gender, social, or economic status of the offender. The exercise of constitutional rights by the defendant during the adjudication process is not a justification for the imposition of a more severe sentence than is warranted by the offense of conviction, criminal history of the offender, and any relevant mitigating and aggravating factors. However, acceptance of responsibility and cooperation with law enforcement, which may involve relinquishment of rights, may be considered as mitigating factors justifying imposition of a more lenient sentence.

G. Sanctions imposed shall not be excessive.

H. The sentencing judge should have broad discretion in the determination and imposition of appropriate sentencing alternatives in particular cases.

I. Reasons for the imposition of a particular sentence shall be set forth for the record to facilitate appellate review.

J. The guidelines are advisory to the sentencing judge. No sentence shall be declared unlawful, inadequate, or excessive solely due to the failure of the judge to impose a sentence in conformity with the designated sentence range provided by the guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 18:45 (January 1992), repromulgated LR 18: (February 1992).

Chapter 2. Determining Sentences Under the Sentencing Guidelines

§201. Sentencing Guidelines Grid

A. The basis for the sentence for any offender convicted of a felony is determined by locating the designated sentence range in the appropriate cell of the Sentencing Guidelines Grid, hereinafter referred to as the "grid." See Chapter 4, §403.A, "Sentencing Guidelines Grid." The appropriate cell is determined by the crime seriousness level of the offense and the criminal history index of the offender.

B. In imposing a sentence under the guidelines, the court shall state for the record the factors which led the court to determine that the cell in the grid was appropriate. The court may refer to any pre-sentence investigation report or sentencing guidelines report, if available, in stating for the record the factual basis for imposing sentence.

C. If the sentence imposed falls within the range of the appropriate cell of the grid, the sentence is appropriate for purposes of the guidelines and the court is not required to set forth additional factors justifying the selection of the particular sentence.

D. Sentences greater or lesser than a penalty within the designated sentence range should be determined through the procedures for departure. See §209, "Departures from the Designated Sentence Range".

E. Use of mandatory minimum sentences, concurrent or consecutive sentences, and other sentencing considerations should be determined through the procedures set forth in the guidelines or as otherwise provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 18:45 (January 1992), repromulgated LR 18: (February 1992).

§203. Crime Seriousness Level

A. The crime seriousness level is determined by the

offense of conviction.

B. Offenses are ranked according to the following:

1. the interest protected, and

2. the type of level of harm or threat of harm proscribed by statute.

C. The placement of an offense in a particular seriousness level is determined by the typical case for each offense.

D. Offenses listed within each level of seriousness are deemed to be generally equivalent in seriousness.

E. The seriousness level for the felony offenses for which a crime seriousness level has been determined are set forth by level in the Crime Seriousness Master Ranking List. See Chapter 4, §401.A, Crime Seriousness Master Ranking List. Felony offenses are classified into five categories of offenses which are subdivided into 10 levels of seriousness ranging from high, Level 0 to low, Level 9, listed alphabetically within each level.

1. The five categories of felony offenses are Categories I, II, III, IV, and V. Category I offenses are levels 0 and 1; Category II offenses are levels 2 and 3; Category III offenses are levels 4 and 5; Category IV offenses are levels 6 and 7; and Category V offenses are levels 8 and 9.

2. All offenses with a mandatory life sentence are in Category I at level 0.

3. The crime seriousness level for Criminal Conspiracy (R.S. 14:26) is one level below the crime seriousness level of the completed offense contemplated by the conspiracy, unless the completed offense is level 9.

4. The crime seriousness level for Attempt (R.S. 14:27) is one level below the crime seriousness level of the completed offense attempted by the offender, unless the completed offense is level 9.

5. The crime seriousness level for Attempt (R.S. 14:27) or Conspiracy (R.S. 14:26) to commit an offense ranked a level 9 is also ranked at level 9.

6. The crime seriousness level for Inciting a Felony (R.S. 14:28) is level 7 regardless of the level of the incited felony.

7. The crime seriousness level for Accessory after the Fact (R.S. 14:25) is level 6 regardless of the level of the felony to which the offender is an accessory.

F. For the convenience of the courts, three additional ranking lists are provided which list the offenses by:

1. Louisiana Revised Statute Number, and

2. Offense Name, alphabetically, and

3. Crime Family, as designated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 18:45 (January 1992), repromulgated LR 18: (February 1992).

§205. Criminal History Index Classification System

A. Criminal History Index Classification System

The Criminal History Index Classification System, hereinafter referred to as the *criminal history index,* is the method of evaluating an offender's criminal history in a uniform and consistent manner. The criminal history index is used to reflect increased levels of culpability for offenders who have previously been convicted of offenses or adjudicated delinquent. The index is based on computational rules which result in the assignment of varying points for certain prior convictions or adjudications.

B. Definitions

1. *Crime family* means offenses which have been designated by the commission to be included within the same *crime family* based on similar interests protected and type of harm proscribed by the offenses. See Chapter 4, §402.D, Crime Family Table. Attempt, Criminal Conspiracy, Inciting a Felony, and Accessory After the Fact are considered to be in the same *crime family* as the completed offense or the offense to which the offender was an accessory. If a felony offense has not been designated to be included within a *crime family*, but the court determines that the offense is analogous to the offenses in a particular *crime family,* the court may treat that offense as included within the *crime family* for purposes of imposing sentence in a particular case. In such case, the court shall state for the record its reasons for finding that the offense was analogous to those of a particular *crime family.*

2. *Crime-free time* means a period of time during which the offender was not in a *custody status,* as defined below, and during which the offender has not committed an offense which subsequently results in a conviction.

3. *Custody status* means any form of criminal justice supervision resulting from a conviction or an adjudication of delinquency including post conviction release or bail, confinement, probation, or parole.

4. *Felony adjudication* means any adjudication for delinquency by a court exercising juvenile jurisdiction, for an offense which, if committed by an adult, would be a felony, as defined herein, except those which were expunged or subject to expungement at the time of the commission of the offense serving as the basis for the current conviction.

5. *Felony conviction*, for purposes of the Guidelines, means a conviction for an offense punishable by a sentence of death or imprisonment, with or without hard labor, in excess of one year at the time of conviction, under the laws of this state, any other state, the United States, or any foreign government or country.

6. *Misdemeanor adjudication* means any adjudication for delinquency by a court exercising juvenile jurisdiction for an offense which, if committed by an adult, would be a misdemeanor, as defined herein, except those which were expunged or subject to expungement at the time of the commission of the offense serving as the basis for the current conviction.

7. *Misdemeanor conviction,* for purposes of the guidelines, means any other conviction which is counted in the computation of criminal history score.

8. *Prior conviction* or *prior adjudication*, for purposes of the guidelines, means a plea of guilty or nolo contendere, a verdict of guilty, a judgment of guilt, or an adjudication of delinquency occurring before the conviction for the offense which serves as the basis for the current sentencing.

C. Criminal History Index Factors

1. The criminal history index is based on points derived from the following factors:

a. prior felony convictions;

b. prior applicable misdemeanor convictions;

c. prior adjudications of delinquency;

d. crime-free time;

e. custody status at the time of the commission of the offense serving as the basis for the current conviction.

2. The Criminal History Index is composed of seven classes ranging from Class A, most serious criminal history,

to Class G, least serious criminal history.

3. Method of Calculation

a. Seriousness score: Score all prior felony convictions and felony adjudications of delinquency by the number of points ascribed to the seriousness level of the offense of conviction as set forth in Chapter 4, §402.A and C. If the prior felony conviction is based on an unranked offense, i.e., not ranked on the crime seriousness ranking tables, the court may assign a seriousness score of one point to the conviction. If the court believes that a seriousness score of one point significantly underrepresents the seriousness of the prior conviction, the judge may use the seriousness score of an analogous offense, provided the court states for the record why the unranked offense is analogous to the ranked offense which serves as the basis for the score.

b. Prior misdemeanors: Add one-fourth (.25) point, not to exceed a total of one point, for each of the following misdemeanor convictions or adjudications:

i. Any offense in Louisiana Revised Statutes Title 14 or the Uniform Controlled Dangerous Substances Law of Louisiana Revised Statutes Title 40 or any local ordinance which is substantially similar to an offense in Title 14 or the Uniform Controlled Dangerous Substances Law of Title 40.

ii. Any traffic offense in Louisiana Revised Statutes Title 32 or local traffic ordinance substantially similar to any Title 32 traffic offense if the current offense of conviction involves the operation of a motor vehicle.

c. Prior similar criminal behavior: Add one-half (.5) point for each prior felony conviction or adjudication if the prior offense of conviction or adjudication is in the same "crime family" as the current offense of conviction. See Chapter 4, §402.D, Crime Family Table.

d. Crime-free time: Multiply the point value of each prior conviction or adjudication of any offense, except a level 0 offense, by the appropriate factor as set forth in Chapter 4, §402.E, if over five years of "crime-free time" has elapsed prior to the commission of the current offense of conviction. The "point value" of the prior conviction or adjudication to be multiplied by the appropriate "crime-free time" factor shall include the criminal history score of the prior conviction or adjudication as determined by §402.A, B, and C and any additional points added for "prior similar criminal behavior."

e. Offenses committed during custody status: Add one point if the current felony offense was committed while the offender was in a "custody status."

f. Limitation on prior misdemeanor convictions: Points added to an offender's criminal history index score for misdemeanor convictions or adjudications shall not increase the offender's criminal history index more than one level.

g. Multiple convictions on same day: Count only the most serious conviction or adjudication if more than one conviction or adjudication occurred on the same day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:321-329.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 18:46 (January 1992), repromulgated LR 18: (February 1992).

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Michael A. Ranatza
Executive Director

RULE

Office of the Governor
Patient's Compensation Fund Oversight Board

The Patient's Compensation Fund Oversight Board, under authority of the Louisiana Medical Malpractice Act, R.S. 40:1299.41 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has adopted a set of comprehensive rules, LAC 37:III.Chapters 1-17, providing for and governing the organization, administration and defense of the Patient's Compensation Fund ("the fund") by the Patient's Compensation Fund Oversight Board, setting forth the requirements for maintaining financial responsibility and continuing enrollment with the fund by enrolled health care providers and providing for the recordkeeping, accounting and reporting of claims data by the fund and enrolled health care providers.

Title 37
INSURANCE
Part III. Patient's Compensation Fund Oversight Board
Chapter 1. General Provisions

§101. Scope

The rules of this Part provide for and govern the organization, administration and defense of the Patient's Compensation Fund (the fund or PCF) by the Louisiana Patient's Compensation Fund Oversight Board (the board), within the Office of the Governor; the requirements and procedures for enrollment with the fund by qualified health care providers; the maintenance of required financial responsibility and continuing enrollment with the fund by enrolled health care providers; recordkeeping, accounting and reporting of claims and claims data by the fund and enrolled health care providers; and defense of the fund and the payment of judgments, settlements and arbitration awards by the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§103. Source and Authority

These rules are promulgated by the board to provide for and implement its authority and responsibility to administer and defend the Patient's Compensation Fund pursuant to the Louisiana Medical Malpractice Act (the act), R.S. 40:1299.41-1299.48.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§105. Patient's Compensation Fund: Description

The Patient's Compensation Fund is a special fund established by R.S. 40:1299.44, funded by surcharges paid by private health care providers enrolled with the fund, to provide just compensation to patients suffering loss, damages or expense as the result of professional malpractice in the provision of health care by health care providers enrolled with the fund, when and to the extent that a judgment or settlement or a final award in an arbitration proceeding is in excess of the total liability of all liable health care providers, as provided by and subject to the limitations of R.S. 40:1299.42. Such fund, therefore, comprises monies held in

trust as a custodial fund by the state for the use, benefit, and protection of medical malpractice claimants and the fund's private health care provider members. Responsibility and authority for administration and operation of the fund, including, but not limited to, the evaluating, establishing reserves against, defending, and settling claims against the fund, applying to the Louisiana Insurance Rating Commission, on the basis of annual actuarial studies, for surcharge rates or rate changes, and administering medical review panel proceedings under R.S. 40:1299.47, is vested in the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§107. Purpose and Objective of Rules; Construction, Application

These rules are adopted and promulgated to ensure that the Patient's Compensation Fund is organized, administered and operated on a financially and actuarially sound basis so as to achieve the purpose for which it was established, by providing that qualification for enrollment is based on sound and realistic standards of financial responsibility; that the fund and its surcharge rates are adequate for the risks assumed; that surcharges are timely collected; that surcharge rate filings are based on reasonably current and complete claims experience data; that actual and potential claims against the fund are timely reported; that reserves against claims are properly established; that the fund is properly defended against improper, unjustified and excessive claims; and that the fund is responsible and accountable to the patients for whose benefit it exists and to its enrolled health care providers. These rules shall be construed, interpreted and applied so as to achieve such purposes and objectives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§109. General Definitions

A. As used in these rules, the following terms shall have the meanings specified:

Act - the Louisiana Medical Malpractice Act, Act 1975, No. 817, as amended, R.S. 40:1299.41-1299.48.

Board - the Louisiana Patient's Compensation Fund Oversight Board established pursuant to R.S. 40:1299.44(D).

Executive Director - the executive director of the Louisiana's Patient's Compensation Fund Oversight Board, as designated, appointed and delegated authority pursuant to §303.

B. All terms used in these rules which are defined by the act, R.S. 40:1299.41(A), shall have the same meanings as used in these rules as defined by the act.

C. Masculine terms wheresoever used in these rules shall also be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§111. Interpretive Definitions

As used in these rules and in the act, the following terms are interpreted and deemed to have the meanings specified.

Certified Registered Nurse Anesthetist - a registered nurse who administers any form of anesthetic to any person in Louisiana in accordance with the conditions specified by R.S. 37:930, as amended.

Chiropractor - a person holding a license to engage in the practice of chiropractic in the state of Louisiana, pursuant to R.S. 37:2801-2830, as amended.

Dentist - a person holding a license to engage in the practice of dentistry in the state of Louisiana, pursuant to R.S. 37:751-793, as amended.

Licensed Practical Nurse - a person holding a license to engage in the practice of practical nursing in the state of Louisiana, pursuant to R.S. 37:961-979, as amended.

Non-Profit Cancer Treatment Facility - a non-profit facility considered tax-exempt under §501(c)(3), Internal Revenue Code, pursuant to 26 U.S.C. §501(c)(3), for the diagnosis and treatment of cancer or cancer-related diseases, whether or not such a facility is required to be licensed by this state.

Nurse Midwife - a registered nurse certified by the Louisiana State Board of Nursing as a certified nurse midwife.

Optometrist - a person holding a license to engage in the practice of optometry in the state of Louisiana, pursuant to R.S. 37:1041-1068, as amended.

Person - an individual, natural person.

Pharmacist - a person holding a certificate of registration issued by the Louisiana Board of Pharmacy pursuant to R.S. 37:1171-1208, as amended.

Physical Therapist - a person holding a license to engage in the practice of physical therapy in the state of Louisiana, pursuant to R.S. 37:2401-2418, as amended.

Podiatrist - a person holding a license to engage in the practice of podiatry in the state of Louisiana, pursuant to R.S. 37:611-628, as amended.

Professional Corporation - any professional corporation a health care provider is authorized to form under the provisions of Title 12 of the Louisiana Revised Statutes of 1950, as amended.

Psychologist - a person holding a license to engage in the practice of psychology in the state of Louisiana, pursuant to R.S. 37:2351-2366, as amended.

Registered Nurse - a person holding a license to engage in the practice of nursing in the state of Louisiana, pursuant to R.S. 37:911-931, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§113. Severability

If any provision of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provisions or applications, and to this end the several provisions of these rules are hereby declared severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 3. Organization, Functions and Delegations of Authority

§301. Board Organization

A. Before taking office, each member of the board duly appointed by the governor shall subscribe before a notary public, and cause to be filed with the secretary of the board, an oath in substantially the following form:

> I HEREBY SOLEMNLY SWEAR AND AFFIRM that I accept the trust imposed on me as a member of the Patient's Compensation Fund Oversight Board, and will perform the duties imposed on me as such by the laws of the state of Louisiana to the best of my ability and without partiality or favoritism to any constituency, group or interests which I may individually represent or with whom I may personally be associated.

B. The board shall annually, at its first meeting following the first day of July of each year, elect from among its members as a chairman, a vice-chairman, and a secretary, each of whom shall serve in such office until their successors are duly elected. The board may elect a successor chairman or secretary at any time that the incumbent of such office resigns from such office or by death or disability becomes incapacitated from discharging the responsibilities of such office.

C. Meetings of the board shall be noticed, convened and held not less frequently than quarterly during each calendar year and otherwise at the call of the chairman or on the written petition for a meeting signed by not less than that number of board members constituting a quorum of the board. Meetings of the board shall be held on such date and at such time and place as may be designated by the chairman, or in default of designation by the chairman, by agreement of a quorum of the board.

D. Five members of the board shall constitute a quorum for all purposes, including the call and conduct of meetings, the rulemaking functions of the board, and the exercise of all other powers and authorities conferred on the board by law. No member of the board may be represented by proxy at any meeting of the board or otherwise vote or act on or participate in the affairs of the board by proxy. Except as may be otherwise provided by law or by the policies of the board, all actions which the board is empowered by law to take shall be effected by vote of not less than a majority of the members of the board present at a meeting of the board at which a quorum is present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§303. Executive Director of the Patient's Compensation Fund Oversight Board

A. The position of executive director of the Louisiana's Patient's Compensation Fund Oversight Board is hereby established by the board as an unclassified position. The executive director shall be employed by the board and, subject to other provisions of law respecting qualification for and maintenance of governmental employment, hold such office at the pleasure of the board. In addition to other qualifications required by law for such office, the executive director shall be at least 21 years of age, a graduate of an accredited postsecondary college or university, and have had prior professional experience in insurance underwriting and actuarial science as appropriate to the executive director's responsibilities pursuant to these rules.

B. The executive director shall be responsible, and accountable to the board, for the overall administration, operation, conservation, management and defense of the fund to the extent of the responsibilities imposed on the board by the act. Without limitation on the scope of such responsibility, the executive director shall be specifically responsible for:

1. receiving and processing health care provider applications for enrollment with the fund;

2. determining whether applicants for enrollment satisfy the standards of financial responsibility and possess the other qualifications for enrollment specified by these rules;

3. timely collection of surcharges from, or paid by insurers on behalf of, enrolled health care providers.

4. certification of enrollment upon the presentation of claims against health care providers enrolled with the fund;

5. processing claims against enrolled health care providers and the fund in accordance with the act and these rules;

6. collection, accumulation and maintenance of comprehensive historical claims experience data from enrolled health care providers and insurance companies providing professional liability coverage to health care providers in the state of Louisiana, in such form and array as may be necessary or appropriate to permit the fund's actuary to develop sound and appropriate surcharge rates for the fund;

7. maintenance of accurate, current and complete data on pending and concluded and closed claims against the fund;

8. coordination of the defense and disposition of claims against the fund with the Office of Risk Management, within the Division of Administration, state of Louisiana;

9. payment of judgments, settlements, arbitration awards and medical expenses as recommended by the Office of Risk Management;

10. retention of an actuary for the fund in accordance with §701;

11. development and submission, in conjunction with the PCF's actuary, of surcharge rate and rate change filings with the Louisiana Insurance Rating Board, based on annual actuarial studies;

12. financial accounting for the fund in accordance with generally-accepted accounting principles;

13. development and submission of an annual budget and appropriation request as provided by §§1305-1307 of these rules;

14. preparation and submission of such reports on the status, administration and operation of the fund, and on the disposition of individual claims against the fund, as required by law or as directed by the board; and

15. the discharge and performance of such other duties, responsibilities, functions and activities as are expressly or impliedly imposed on the board by the act or as specified by these rules.

C. All authority for the administration and operation of the fund vested in the board by the act is hereby delegated to the executive director. In the exercise of such authority, the executive director shall be accountable to, and subject to the superseding authority of, the board.

D. Without limitation on the generality of the provision made by §307 for the payment of the expenses of administration and defense of the fund, the salary and employment

benefits of the executive director and any expenses properly and lawfully incurred by the executive director in the performance of his duties under these rules shall be payable by the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§305. Fund Property

A. The board is the custodian of all tangible and intangible property, assets, rights and interests of the fund and the repository for all of the fund's records, files, information and data. All furniture, fixtures, equipment, goods, supplies, files, records, information, data, computers, computer systems, software and documentations, and any other tangible or intangible property, rights or interests of whatsoever kind or nature purchased or acquired by, transferred or donated to, or developed or produced through the use of funds of the PCF, wheresoever or howsoever located or stored, shall be and remain the property of the fund. No property, rights or interests of the fund shall be sold, transferred, assigned or alienated by the fund except for compensation to the fund equal to or exceeding the reasonably estimated market value of any such property, rights or interests and pursuant to the authorization of the executive director.

B. The board shall annually conduct and record an inventory of all of the property, assets, rights and interests of the fund and shall at all times maintain a current, accurate and complete schedule of the property, assets, rights and interests of the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§307. Expenses of Administration and Defense

All expenses incurred for, by or on behalf of the executive director or the board in their administration, operation and defense of the fund pursuant to the act and these rules shall be borne by the fund, subject to the provision of these rules governing budgeting, accounting and appropriation requests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 5. Enrollment with the Fund

§501. Scope of Chapter

The rules of the Chapter provide for and govern the qualifications, conditions and procedures requisite to enrollment with the fund, demonstration and maintenance of financial responsibility and termination or cancellation of enrollment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§503. Basic Qualifications for Enrollment

To be eligible for enrollment with the fund, a person, professional corporation, professional partnership, or institution shall:

1. be a health care provider, as defined by the act or by these rules, who or which is engaged in the provision of health care services within the state of Louisiana, and which is not organized solely or primarily for the purpose of qualifying for enrollment with the fund;

2. demonstrate and maintain, to the satisfaction of and in the manner specified by the executive director and in accordance with the standards prescribed by §§503-511 hereof, or as otherwise provided by law, financial responsibility for, and with respect to, malpractice or professional liability claims asserted against the person or institution;

3. make application for enrollment upon forms prescribed and supplied by the executive director, pursuant to §513 of these rules; and

4. pay the applicable surcharges to the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§505. Financial Responsibility: Insurance

A. A health care provider shall be deemed to have demonstrated the financial responsibility requisite to enrollment with the fund by submitting certification that the health care provider is or will be insured on a specific date under a policy of insurance, insuring the health care provider against professional health care malpractice liability claims with indemnity limits of not less than $100,000 plus interest per claim and aggregate annual indemnity limits of not less than $300,000 plus interest for all claims arising or asserted within a 12-month policy period.

B. To be acceptable as evidence of financial responsibility pursuant to this Section, an insurance policy:

1. must be issued by an insurance corporation company admitted to do business in this state, by a risk retention group organized and operating in this state pursuant to the Federal Liability Risk Retention Act of 1986, 15 U.S.C. 3901 et seq. and which has given notice of its operation within this state to the commissioner of insurance and is otherwise in compliance with the Louisiana Risk Retention Group Law, R.S. 22:2071 et seq., or by the Louisiana Residual Malpractice Insurance Authority, R.S. 40:1299.46;

2. shall be of a form approved by the commissioner of insurance of the state of Louisiana and specifically approved by the executive director;

3. must provide for the insurer's assumption of the defense of any covered claim, without limitation on the insurer's maximum obligation respecting the cost of defense;

4. shall be nonassessable and not subject to a retention or deductible payable by the insured health care provider, with respect to liability, costs of defense or claim adjustment expenses, in excess of $25,000; and

5. must, by provision or endorsement, obligate the insurer to give immediate notice to the executive director of cancellation, termination, or lapse of the policy, or of modification of the scope or limits of its coverage by endorsement or otherwise.

C. The certification required by Subsection A of this Section shall be issued and executed by an officer or authorized agent of the applicant health care provider's insurer and shall specifically identify the policyholder, the named insureds under such policy, the policy period, the limits of cov-

erage and any applicable deductible or uninsured retention. Such certification shall be accompanied by a complete specimen copy of the applicable policy, or identification of the specific policy form if such form has previously been filed with and approved by the executive director.

D. Upon request, the executive director shall advise applicants as to whether any specified policy form has been approved pursuant to this Section, or provide a list of all policy forms so approved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§507. Financial Responsibility: Self-Insurance

A. A health care provider shall be deemed to have demonstrated the financial responsibility requisite to enrollment with the fund by depositing with the board $125,000, in money or represented by irrevocable letters of credit, federally insured certificates of deposit, or in bonds, securities, cash values of insurance, or other securities approved by the executive director of the principal value of not less than $125,000. All money, certificates of deposit, bonds or securities deposited pursuant to this Section shall be conditioned only for, dedicated exclusively to, and held in trust for the benefit and protection of and as security for the prompt payment of all malpractice claims arising or asserted against the health care provider.

B. For the purposes of this Section, upon approval of the board based on an application filed by the group, any group of health care providers organized to and actually practicing together or otherwise related by ownership, whether as a partnership or professional corporation, shall be deemed a single health care provider and shall not be required to post more than one deposit.

C.1. The following bonds and securities meeting the standards established by the board shall be deemed approved by the board for purposes of the deposit required by this Section:

a. bonds or securities not in default as to principal or interest which are the direct obligations of or which are secured or guaranteed as to principal and interest by full faith and credit of the United States, any state or territory of the United States, or the District of Columbia;

b. bonds or evidence of indebtedness not in default as to principal or interest which are the direct obligations of or which are secured or guaranteed as to principal and interest by any political subdivision of this state or any other state or territory of the United States or the District of Columbia;

c. the bond of an authorized surety company lawfully engaged in business in this state which has a minimum surplus of $5 million;

d. an unconditional, evergreen letter of credit with automatic renewal provision; and

e. an escrow account in the name of the PCF.

2. In addition to the above, a health care provider may apply to the board for approval of insurance products or other securities which, if found to be adequate, shall be approved.

D. Money, accounts, certificates of deposit, or other approved insurance or securities deposited, pledged or assigned to the board pursuant to this Section shall not be assigned, transferred, sold, mortgaged, pledged, hypothecated or otherwise encumbered by the health care provider nor shall any such deposit, account or certificate of deposit be subject to writ of attachment, sequestration or execution except pursuant to a final judgment or court-approved settlement issued or made in connection with and arising out of a malpractice claim against the health care provider.

E. To maintain financial responsibility for continuing enrollment with the fund, a health care provider shall at all times maintain the unimpaired principal value of the deposit provided for by this Section at not less than $125,000. The value of the health care provider's deposit shall be deemed impaired when any portion is seized pursuant to judicial process.

F.1. Reserves for claims against a self-insured health care provider shall, for the purposes of this Section, be established in any of the following ways:

a. the self-insured health care provider shall, within 90 days of notice of a claim and no less than every 90 days thereafter, submit a proposed reserve amount to the Office of Risk Management, along with appropriate supporting documentation. Unless rejected by the Office of Risk Management and the executive director within 30 days of receipt, the reserve amount submitted shall be deemed approved. If a reserve amount is rejected timely, the self-insured health care provider may, within 15 days, submit a new reserve amount or appeal the rejection of the board. If appealed timely, the matter shall be placed on the agenda of the next meeting of the board, at which time the board may accept the proposed reserve, establish a new amount, or defer action for further information. The decision of the board shall be final;

b. the self-insured health care provider may contract with a consultant company approved by the board to set its reserves;

c. the self-insured health care provider may set its reserves with the assistance of in-house counsel and/or risk managers and/or defense attorneys when approved to do so by the board.

2. In granting approval under either Subparagraphs b or c, the board shall give consideration to the qualifications of the consultant company, in-house counsel, risk managers and/or defense attorneys, including, but not limited to, experience in reserve setting and history of approval by national excess insurance companies. Under both Subparagraphs b and c, the self-insured health care provider shall submit quarterly loss-run reports to the fund, and the fund may make annual on-site inspections of the files and reserves.

G. In the event that a health care provider's deposit becomes impaired, he shall have five days to make such additional deposit as will restore the minimum deposit value prescribed by this Section. A health care provider's enrollment with the fund shall terminate on and as of the last day set by these rules if the health care provider has not on or prior to such date restored the minimum deposit value prescribed by this Section. In the case of multiple health care providers as set forth in Subsection B of this Section, the enrollment with the fund of each member of the group or each related entity shall terminate on and as of the last day set by these rules if the minimum deposit value prescribed by this Section has not been restored on or prior to such date.

H. A self-insured health care provider who evidences financial responsibility pursuant to this Section may, upon 45 days prior written notice to the executive director, withdraw

any portion of the deposit prescribed by this Section provided that following such withdrawal, the value of the deposit shall not be impaired.

I. 1. A self-insured health care provider evidencing financial responsibility pursuant to this Section may withdraw the deposit prescribed by this Section upon the authorization of the executive director, which authorization may be given if there are no malpractice claims then pending against the health care provider and when the health care provider files with the executive director, not less than 180 days prior to the date such withdrawal is to be effected, a certificate, signed and verified under oath by the health care provider files with the executive director, not less than 180 days prior to the date such withdrawal is to be effected, a certificate, signed and verified under oath by the health care provider, certifying that:

a. the health care provider wishes to withdraw from enrollment with the fund;

b. there are no unpaid final judgments or settlements against or made by the health care provider in connection with or arising out of a malpractice claim; and

c. there are no unasserted malpractice claims which are probable of assertion against the health care provider.

2. Effective as of the date on which a self-insured health care provider's deposit is withdrawn pursuant to this Section, the health care provider's enrollment with the fund shall be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§509. Financial Responsibility: Self-Insurance Trusts

A. The shareholders of a professional corporation, the partners of a professional partnership, a solo practitioner, a health care provider institution or a group of such institutions may demonstrate the financial responsibility requisite to enrollment with the fund by the establishment and maintenance of a financially and actuarially sound self-insurance trust, approved by the executive director, and making and maintaining, on behalf of such trust as an entity, a deposit of not less than $125,000 in money or represented by irrevocable letters of credit, federally-insured certificates of deposit, or in bonds or securities approved by the executive director, of the principal value of not less than $125,000.

B.1. The following bonds and securities shall be deemed approved by the board for purposes of the deposit required by this Section:

a. bonds or securities not in default as to principal or interest which are the direct obligations of or which are secured or guaranteed as to principal and interest by full faith and credit of the United States, any state or territory of the United States, or the District of Columbia;

b. bonds or evidence of indebtedness not in default as to principal or interest which are the direct obligations of or which are secured or guaranteed as to principal and interest by any municipal corporation or political subdivision of this state or any other state or territory of the United States or the District of Columbia;

c. the bond of an authorized surety company lawfully engaged in business in this state which has a minimum surplus of $5 million;

d. an unconditional, evergreen letter of credit with automatic renewal provision; and

e. an escrow account in the name of the PCF.

2. In addition to the above, a health care provider may apply to the board for approval of other securities which, if found to be adequate, shall be approved.

C. Application to the executive director for approval of a self-insurance trust as evidence of financial responsibility shall include:

1. identification of, by name, address and category of practitioner or each shareholder of an applicant professional corporation, each partner of an applicant professional partnership or each health care institution participating in the self-insurance trust;

2. a certified copy of the self-insurance trust instrument and any related organizational or operational documents;

D. The executive director shall approve of a self-insurance trust if such trust meets the requirements of the Health Care Financing Administration's (HCFA) Medicare Provider Reimbursement Manual, Part I, §2162.7, related to self-insurance trusts. Those standards shall not, however, be exclusive and the executive director may approve such other qualified self-insurance trusts as appropriate although they do not meet those requirements.

E. Each self-insurance trust approved by the executive director as evidence of financial responsibility pursuant to this Section shall be subject to audit or examination upon reasonable prior notice to the trustees thereof, and each such trust shall, within 60 days of the conclusion of its fiscal year, file with the executive director financial statements setting forth the financial condition of the trust at the last day of the preceding year and for the year then ended, audited or reviewed by an independent certified public accountant.

F. Each self-insurance trust approved by the executive director as evidence of financial responsibility pursuant to this section shall give written notice to the executive director within 10 days of any date that:

1. the trust instrument or other organizational or operational documents are amended; or

2. any participating member of the trust ceases to be a member or any new member begins participation with the trust.

G. For the purpose of determining whether the deposit required of an approved self-insurance trust is impaired, the unpaid final judgments, court-approved settlements and reserves against claims against all members of a self-insurance trust shall be aggregated.

H.1. Reserves for claims against a self-insurance trust shall, for the purposes of this Section, be established either of the following ways:

a. the self-insurance trust shall, within 90 days of notice of a claim and no less than every 90 days thereafter, submit a proposed reserve amount to the Office of Risk Management, along with appropriate supporting documentation. Unless rejected by the Office of Risk Management and the executive director within 30 days of receipt, the reserve amount submitted shall be deemed approved. If a reserve amount is rejected timely, the self-insured trust may, within 15 days, submit a new reserve amount or appeal the rejection to the board. If appealed timely, the matter shall be placed on the agenda of the next meeting of the board, at which time the board may accept the proposed reserve, establish a new amount, or defer action for further information.

The decision of the board shall be final;

b. the self-insurance trust may contract with a consultant company approved by the board to set its reserves; or

c. the self-insurance trust may set its reserves with the assistance of in-house counsel and/or risk managers and/or defense attorneys when approved to do so by the board.

2. In granting approval under either Subparagraphs b or c, the board shall give consideration to the qualifications of the consultant company, in-house counsel, risk manager and/or defense attorneys, including, but not limited to, experience in reserve setting and history of approval by national excess insurance companies. Under both Subparagraphs b and c, the self-insured trust shall submit quarterly loss-run reports to the fund, and the fund may make annual on-site inspections of the files and reserves.

I. A self-insurance trust approved by the executive director as evidence of financial responsibility shall be treated the same as insurance, and each health care provider covered by such a self-insurance trust shall be considered to have evidenced financial responsibility as provided in §505 hereof.

J. In the event that a self-insurance trust's deposit becomes impaired, the executive director shall give written notice of such impairment to the self-insurance trust, and the self-insurance trust shall, unless a shorter or longer period is provided by the board, have 120 days from receipt of such notice to make such additional deposit pursuant to Subsection A of this Section as will restore the minimum deposit value prescribed by this Section. A self-insurance trust's enrollment with the fund shall terminate on and as of the last day set by these rules or, if applicable, the board, if the health care provider has not on or prior to such date restored the minimum deposit value prescribed by this Section.

K. A self-insurance trust which evidences financial responsibility pursuant to this Section may, upon 45 days prior written notice to the executive director, withdraw any portion of the deposit prescribed by this Section provided that following such withdrawal, the value of the deposit shall not be impaired.

L.1. A self-insurance trust evidencing financial responsibility pursuant to this Section may withdraw the deposit prescribed by this Section upon the authorization of the executive director, which authorization may be given if there are no malpractice claims then pending against the members of the trust and when the trust files with the executive director, not less than 180 days prior to the date such withdrawal is to be effected, a certificate, signed and verified under oath by the trustee of the trust, certifying:

a. that the trust wishes to withdraw from enrollment with the fund;

b. that there are no unpaid final judgments or settlements against or made by the trust in connection with or arising out of a malpractice claim; and

c. that there are no unasserted malpractice claims which are probable of assertion against the trust or its members.

2. Effective as of this date on which a self-insurance trust's deposit is withdrawn pursuant to this Section, the member's deposit of the trust enrollment with the fund shall be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§511. Coverage: Partnerships and Professional Corporations

When, and during such period that, each of the voting shareholders of a professional corporation, or each of the partners of a partnership, and each of their employees eligible for qualifications as a health care provider under the act is enrolled with the fund as a health care provider, having paid the surcharges due the fund for enrollment of such individual, such corporation or partnership shall, without the payment of an additional surcharge, be deemed concurrently qualified and enrolled with the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§513. Enrollment Procedure

A. Application for enrollment with the fund shall be made upon forms prescribed and supplied by the executive director. The executive director shall require that each applicant supply his or its proper legal name, the applicant's principal professional address, the address of other professional offices or places of practice of the applicant, the applicant's professional license, certification or registration number, information relating to the nature and scope of the applicant's practice sufficient to identify the class or category of the practitioner, information on malpractice claims previously concluded or then pending against the applicant, and such other information as the executive director may prescribe.

B. The application shall be accompanied by evidence of financial responsibility in the form prescribed by §§505 to 509 of these rules, as applicable.

C. Upon receipt of a completed application, the executive director shall advise the applicant in writing of the executive director's determination as to whether the applicant is qualified for enrollment with the fund and, if qualified, of the applicable surcharge payable to the fund. The surcharge shall be paid by the applicant and collected by the fund in accordance with §§711-713 of these rules.

D. When the executive director determines that an applicant is not qualified for enrollment with the fund, he shall notify the applicant by registered or certified mail, return receipt requested, within 30 days of receipt of the completed application. The applicant may, within 15 days of receipt of the notice, appeal the determination to the board by mailing notice of said appeal by registered or certified mail, return receipt requested. If appealed timely, the matter shall be placed on the agenda of the next meeting of the board, at which time the board may hear such evidence as it deems appropriate and uphold or reverse the decision of the executive director. The decision of the board shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§515. Certification of Enrollment

A. Upon receipt and approval of a completed application and payment of the applicable surcharge by or on behalf of the applicant health care provider, the executive director shall issue and deliver to the health care provider a certifi-

cate of enrollment with the fund, identifying the enrolled health care provider and specifying the effective date and term of such enrollment.

B. Duplicate or additional certificates of enrollment shall be made available by the executive director to and upon the request of an enrolled health care provider or his or its attorney, or professional liability insurance underwriter when such certification is required to evidence enrollment with the fund in connection with an actual or proposed malpractice claim against the health care provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§517. Expiration, Renewal of Enrollment

A. Enrollment with the fund terminates:

1. as to a health care provider evidencing financial responsibility by certification of insurance pursuant to §505 of these rules, on and as of the effective date and time of termination of the policy period of the health care provider's professional liability insurance coverage;

2. as to a health care provider evidencing financial responsibility pursuant to §§507-509 of these rules, at 11:59 p.m., central standard time, at the conclusion of one year from the date on which enrollment became effective.

B. Enrollment with the fund must be annually renewed by each enrolled health care provider on or before termination of the enrollment period by submitting to the executive director an application for renewal, upon forms supplied by the executive director and payment of the applicable surcharge in accordance with the rules hereof providing for the fund's billing and collection of surcharges from insured and self-insured health care providers.

C. An application for renewal of enrollment form shall be mailed by the executive director to each health care provider then enrolled with the fund not less than three months prior to the date of the termination of the provider's enrollment with the fund. Such form shall be mailed to the most recent address of each enrolled health care provider as reflected in the official records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§519. Cancellation, Termination of Enrollment

A. A health care provider's enrollment with the fund shall be canceled and terminated:

1. as to a health care provider evidencing financial responsibility by certification of insurance pursuant to §505 of these rules, on and as the effective date of cancellation of the health care provider's professional liability insurance coverage;

2. as to a health care provider evidencing financial responsibility pursuant to §§507-509 of these rules, on and as of any date on which:

a. the health care provider ceases to maintain financial responsibility in the amount and form prescribed by these rules; or

b. the health care provider fails, within the allowed time after notice by the executive director, to provide additional security for financial responsibility when existing financial responsibility security is impaired all as provided in §507;

3. on any date that the health care provider's professional or institutional license, certification or registration is suspended or revoked or that the health care provider ceases to be a health care provider as defined by the act and these rules or otherwise ceases to possess any qualification requisite to enrollment hereunder.

B. Upon written notice to a health care provider, the executive director may cancel and terminate a health care provider's enrollment with the fund effective 30 days following the mailing by registered or certified mail, return receipt requested, or giving of such notice in the event that an enrolled health care provider has failed or refused to timely provide any reports or submit any information or data required to be reported or submitted by these rules. If, within 30 days of receipt of such a notice, a health care provider furnishes to the board any and all delinquent reports, information and data, as specified by such notice, the health care provider's enrollment with the fund may be continued in effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 7. Surcharges

§701. PCF Consulting Actuary

A. In accordance with the provisions of law applicable to contracting for personal, professional or consulting services, the executive director shall retain a qualified, competent and independent consulting actuary to advise and consult the fund on all aspects of the fund's administration, operation and defense which require application of the actuarial science and to perform and submit the annual actuarial study required by the act and these rules predicate to the fund's annual surcharge rate application filings, as specified hereinafter. An individual actuary contracted by the fund, or a principal actuary assigned to the engagement and employed by a partnership, firm or corporation contracted by the funds, shall possess formal education and at least a baccalaureate degree in the actuarial sciences, shall be a full member of the Casualty Actuarial Society, and shall have had substantial prior experience in providing services as a consulting actuary to insurance companies underwriting professional health care liability insurance.

B. The fund's contract with a consulting actuary shall provide that the consulting actuary shall be responsible for:

1. advising the executive director with respect to the necessary and proper content and form of claims experience data collected and maintained by the executive director;

2. advising the executive director and the Office of Risk Management with respect to the establishment, maintenance, and adjustment of reserves on individual claims against the fund and the establishment, maintenance and adjustment of reserves for incurred but not reported claims;

3. performing actuarial analysis of claims experience data collected and maintained by the executive director with respect to the fund, commercial professional liability insurers doing business in this state, self-insured health care providers, together, as necessary or appropriate, with regional or national professional health care liability claims experience data, and development, in consideration of the fund's allocated and unallocated expenses, its organization, administration and legal and regulatory constraints, of a surcharge

rate structure, rated and classified according to the several classes or risks against which the fund provides compensation, that shall reasonably ensure that the PCF is sufficiently funded so as to be and remain financially and actuarially capable of providing the compensation for which it is organized.

4. developing, in conjunction with the executive director, surcharge rate applications and requests for surcharge rate changes in accordance with the consulting actuary's actuarial analyses, for submission to and filing with the Louisiana Insurance Rating Commission (LIRC);

5. personal presentation of surcharge rate and rate change applications on behalf of the fund at meetings of the LIRC, with the staff of the LIRC, and with such other interested or affected persons, firm, organizations and entities as the executive director may request;

6. reviewing, and advising the executive director with respect to the funding and actuarial adequacy of self-insurance trusts and other plans submitted to the executive director by self-insured applicants for enrollment with the fund as evidence of financial responsibility; and

7. generally advising and consulting with the executive director and the Office of Risk Management on all actuarial questions affecting the administration, operation and defense of the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§703. Annual Actuarial Study

A. An actuarial study of the fund and the surcharge rate structure necessary and appropriate to ensure that it is and remains financially and actuarially sound shall be performed annually by the PCF's consulting actuary on the basis of actuarial analysis of all relevant claims experience data collected and maintained by the fund. In conjunction with the executive director, the consulting actuary shall, on behalf of the board, develop and prepare for submission to the LIRC an application for surcharge rates or rate changes. The actuarial study and application for surcharge rates or rate changes shall be completed each year on or before March 15.

B. In the performance of the fund's annual actuarial study and the development of a financially-sound and appropriate surcharge rate structure for the fund, the PCF's consulting actuary and the executive director shall accord the greatest weight to the claims experience of the fund and of commercial professional health care liability insurance underwriters and self-insurance funds with respect to the risk underwritten by such insurers and self-insurance funds in this state and as particularly reflected in such insurers' then most recent premium rate filings with the LIRC or such self-insurance funds' current rate structure and supporting data, provided, however, that such data shall be viewed in light of national claims experience data and provided further that the fund's consulting actuary may place reliance on national claims experience data when, in the opinion of such actuary, claims experience within the state of Louisiana as to any class of risks provides an insufficient basis for reliance thereon for purposes of actuarial analysis or in calculating indicated surcharge rates.

C. Without respect to the rate structure indicated by any annual actuarial study of the fund, no rate application which, if approved and implemented, would or could result in a reduction of the aggregate annual surcharges collected by the fund, shall be filed by the fund when the total amount of the fund is, or by effect of such rate application could become, less than 150 percent of the sum of the aggregate annual surcharges collected by the fund, reserves against individual claims, reserves for incurred but not reported claims, and allocated and unallocated expenses of the fund's administration, operation and defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§705. Risk Rating

Surcharge rates collected by the fund shall be based on and classified according to the classes and categories of health care liability risks underwritten by the fund with respect to each class of health care practitioners and institutions eligible for enrollment with the fund. With regard to hospitals, there shall be, at a minimum, separate rates for acute care beds, psychiatric and substance abuse beds, and long term care beds. Risk classifications and ratings adopted by the fund shall be based on actuarial analysis of the claims experience of health care provider groups enrolled with the fund and equivalent data and practices of commercial insurance underwriters and self-insurance funds insuring such groups. Risk rating classifications for health care providers eligible for enrollment with the fund shall be based on Louisiana claims experience data, including the PCF's own claims experience, unless the PCF's actuary affirmatively demonstrates that, as respects any class of provider, reasonably obtainable, competent and credible Louisiana claims experience data provides an insufficient basis for such classifications under generally accepted insurance actuarial standards, in which case regional or national claims experience data and statistics relative to such classes of health care provider may be utilized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§707. Rate Applications, Filings; Notice of Rates

A. The PCF's application for surcharge rates or rate changes, if indicated by the annual actuarial study conducted pursuant to §703 of these rules, shall be filed with the LIRC by the executive director, on behalf of the board, on or before June 1 of each year.

B. Within 30 days of the date on which the LIRC approves surcharges rates or rate changes which may be implemented by the fund, the executive director shall give written notice of such rates or rate changes, as applicable, to each commercial insurance company authorized and admitted to do business in the state as a casualty insurer and then engaged in underwriting the professional liability risks of any class of health care provider eligible for enrollment with the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR

18: (February 1992).

§709. Interim, Emergency Rate Filings

Interim or emergency applications for surcharge rates or rate changes may be filed by the fund with the LIRC at any time when the executive director, in consultation with the PCF's consulting actuary, determines that a surcharge rate change is necessary to maintain a fund surplus of not less than 50 percent of the sum of the aggregate annual surcharges collected by the fund, reserves against individual claims, reserves for incurred but not reported claims, and allocated and unallocated expenses of the fund's administration, operation and defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§711. Payment of Surcharges: Insurers

A. Applicable surcharges for enrollment with the fund shall be collected on behalf of the fund by commercial professional health care liability insurance companies and approved self-insurance trust funds from insured health care providers electing to enroll with the fund. Such surcharges shall be collected by such insurers and funds at the the same time and on the same basis as such insurers' collection of premiums from such insureds. Surcharges collected by commercial insurance underwriters and funds on behalf of the fund shall be due and payable and remitted to the fund by commercial insurance underwriters and funds within 45 days from the date on which such surcharges are collected from any insured. Remittance of surcharges to the fund shall be made in such form and accompanied by records in such form or on such forms as may be prescribed by the executive director so as to provide for proper accounting of remitted surcharges and the identity and class of health care providers on whose behalf such surcharges are remitted. The payment of surcharges by an approved self-insurance trust fund that does not collect premiums from insureds will be governed by §713 hereof.

B. Surcharges due and payable to the fund by commercial professional liability insurers and approved self-insurance trust funds shall bear interest at the legal rate specified by law from the date due until the date paid to the fund as to any portion of such surcharges with respect to any health care provider electing to enroll with the fund which is not paid on or before the due date specified in Subsection A of this Section. In addition to such interest, a penalty equal to 12 percent of the amount of any surcharge due and unpaid within 60 days of the date on which such surcharge is collected from the insured, may be assessed against the commercial insurer responsible for collecting such surcharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§713. Payment of Surcharges: Self-Insureds

A. Not less than 60 days prior to the termination of enrollment of a health care provider, the executive director shall cause each self-insured health care provider enrolled with the fund and each self-insured health care provider having been approved for enrollment with the fund, to receive a statement of surcharges due the fund by the health care provider for enrollment with the fund during the succeeding enrollment year.

B. Surcharges due the fund by self-insured health care providers for enrollment with the fund for an enrollment year shall be due and payable to the fund prior to the effective date of the coverage, or renewal of coverage, to which the surcharge applies. Remittance of surcharges to the fund shall be made in such form and accompanied by records in such form or on such forms as may be prescribed by the executive director so as to provide for proper accounting of remitted surcharges and the identity and class of health care provider remitting surcharges.

C. Within 10 days following the date on which payment of surcharges is due hereunder by a health care provider, the executive director shall cause each self-insured health care provider having then failed to remit the surcharges to the fund for the succeeding year to receive by registered or certified mail, return receipt requested, a second statement of surcharges due the fund by the health care provider, together with notification that failure to remit such surcharges within 20 days thereafter will result in termination of enrollment with the fund.

D. Surcharges due and payable to the fund by self-insured health care providers shall bear interest at the legal rate specified by law from the date due until the date paid to the fund as to any portion of such surcharges which is not paid on or before the due date specified in Subsection B of this Section. In addition to such interest, a penalty equal to 12 percent of the amount of any surcharge due and unpaid within before the first day of the year to which it applies, may be assessed against a self-insured health care provider.

E. In any action by the board, pursuant to R.S. 40:1299.44(a)(3), to collect a due and payable surcharge, and recover the interest and/or penalties provided for in this Section, the board may also recover reasonable attorney's fees incurred by the fund and the board in connection with prosecution of such action. All amounts so recovered by the board, inclusive of interest, penalties, and attorney's fees, shall be remitted in full to the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 9. Scope of Coverage

§901. Effective Date

A. A health care provider who qualifies for enrollment with the fund by demonstrating financial responsibility through professional liability insurance pursuant to §505 of these rules, shall be deemed to become and be enrolled with the fund effective as of the date on which the surcharge payable by or on behalf of such health care provider is timely paid in accordance with §711 hereof, retroactive to the date the policy period of the insurance policy evidencing such financial responsibility begins. If such surcharge is not timely paid, the effective date of enrollment with the fund shall be the date on which such surcharge, together with any applicable interest, penalties and attorney's fees, is paid to the fund.

B. A health care provider who qualifies for enrollment with the fund by demonstrating financial responsibility by self-insurance pursuant to §507 or by participation in an approved self-insurance trust pursuant to §509 of these rules, and by payment in full of the surcharges due the fund, shall

be deemed to become and be enrolled with the fund effective as of the date following the date on which a then-enrolled provider's prior term of enrollment terminates, or the date on which the provider pays the surcharges due the fund being then qualified and eligible for enrollment with the fund, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§903. Term of Enrollment

A. The enrollment of a health care provider qualified for enrollment by evidence of liability insurance pursuant to §505 hereof shall expire on and as of the date on which the policy period of the insurance policy evidencing such financial responsibility expires.

B. The enrollment of a health care provider qualified for enrollment by evidence of self-insurance pursuant to §507 hereof shall expire one year from the date on which such health care provider's enrollment became effective.

C. The enrollment of a health care provider qualified for enrollment by evidence of participation in approved self-insurance trust pursuant to §509 of these rules shall expire on and as of the earlier of the date on which the health care provider ceases to be a participating member of such trust or one year from the date on which such health care provider's enrollment became effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§905. Scope of Coverage: Insureds

With respect to health care providers qualified from enrollment with the fund by evidence of liability insurance pursuant to §505 hereof, the fund shall be liable for compensation for claims asserted against the health care provider only within the scope of coverage afforded by, and subject to the limitations and exclusions of, the policy of professional liability insurance evidencing the health care provider's financial responsibility, subject to the limitation of liability prescribed by the act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§907. Scope of Coverage: Self-Insureds

A. With respect to health care providers qualified for enrollment with the fund by evidence of self-insurance pursuant to §507 hereof, or by evidence of participation in an approved self-insurance trust pursuant to §509 hereof, the fund shall be obligated to pay compensation to the extent provided by the act only with respect to claims asserted against the health care provider during such health care provider's term of enrollment. For the purposes of the Chapter, coverage by an approved self-insurance trust fund shall be treated the same as insurance and the scope of coverage of the PCF shall be as provided in §905.

B. The fund's obligation for compensation shall extend to the vicarious liability of an enrolled health care provider for acts or omissions of any employee or agent of the provider when acting within the course and scope of his or her employment, except any physician, physician's assistant, certified registered nurse anesthetist, or primary nurse associate (nurse practitioner) employed by the health provider when such employed person is not enrolled with the fund. However, in the case of hospitals, the fund's obligation for compensation shall extend to the vicarious liability of the hospital for the acts or omissions of any employee or agent, other than a physician, when acting within the course and scope of his or her employment. The fund's obligation for compensation does not and shall not extend to any liability or obligation of a health care provider, which the health care provider has assumed or undertaken by contract or agreement, to indemnify, defend or hold harmless any other person, firm or corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§909. Scope of Coverage: Self-Insurance Trusts

With respect to health care providers qualified for enrollment with the fund by evidence of participation in an approved self-insurance trust pursuant to §509 hereof, the fund shall be liable for compensation for claims asserted against the health care provider only within the scope of coverage afforded by, and subject to the limitations and exclusions of, the self-insurance trust instrument evidencing the health care provider's financial responsibility, subject to the limitation of liability prescribed by the act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 11. Reporting

§1101. Reporting of Claims, Reserves, Proposed Settlement

A. Within 30 days of the date on which a malpractice claim is asserted, or of the date on which a claim becomes probable of assertion, against an enrolled health care provider, the health care provider, or the health care provider's liability insurer, shall give notice of such claim to the executive director, if the executive director has not previously received notice of the claim. Such notice shall include identification of the person or persons asserting the claim, the nature of the claim, the circumstances surrounding and the date or dates of the occurrences giving rise to the claim. Such notice shall also advise of the name and address of the attorney at law, if any retained by the health care provider or his or its insurer to represent the health care provider in defense of the claim. If an attorney has not been retained by the health care provider or insurer at the time of such notice, notice shall thereafter be given to the executive director within 10 days of the retention of an attorney to represent the health care provider.

B. Upon the assertion of a claim against an insured health care provider enrolled with the fund or against a self-insured health care provider which establishes reserves against individual claims, the health care provider or his or its insurer, as the case may be, shall promptly give notice to the executive director of the amount of indemnity, defense cost and other loss adjustment expense reserves as have

been established and allocated to the claim by the health care provider or insurer. Within 10 days of the adjustment or modification of any such reserve, a health care provider or insurer shall give notice of such adjustment or modification to the executive director.

C. Each health care provider enrolled with the fund, or the insurer of an enrolled health care provider on behalf of such health care provider, shall give not less than 10 days prior written notice to the executive director of any proposed compromise or settlement of a malpractice claim asserted against the health care provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1103. Claims Experience Reporting: Insurers, Institutions and Self-Insureds

A. On or before March 1 of each year, each insurance company, approved risk retention group and approved self-insurance trust fund then providing professional health care liability insurance to any health care providers enrolled with the fund and each enrolled self-insured health care provider shall file with the fund, through the executive director, a summary of the health care liability claims experience of such health care provider or insurer fully developed for each of the most recently concluded 10 calendar years or for such fewer years as the health care provider or insurer has engaged in business in the state. Claims experience data filed by insurance companies shall include data for all health care providers insured by such insurer in the state, whether enrolled with the fund or not.

B. The reports required by this rule shall contain such information and data and shall be made and filed upon and in accordance with such forms, instructions and array as may be specified and supplied by the executive director, all of which shall be distributed to those required to report no later than the preceding December 1. Such reports shall be signed by an officer of the insurance company or institution and shall be certified by an independent certified public accountant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1105. Noncompliance; Failure to Report

A. Noncompliance with the reporting and filing requirements prescribed by these rules shall be deemed adequate and sufficient legal grounds for the cancellation and termination of enrollment of any enrollee of the fund insured by an insurance company failing or refusing to so report.

B. Noncompliance with the reporting and filing requirements prescribed by these rules shall be deemed adequate and sufficient legal grounds for the cancellation and termination of the enrollment of any self-insured health care provider, approved risk retention group of self-insurance trust failing or refusing to report as required by these rules. The executive director shall give written notice to any self-insured health care provider which, being required to file reports under these rules, fails to do so within the time specified. The enrollment of a health care provider who does not file required reports in proper form shall be terminated 30 days following the mailing of such notice by the executive director if the health care provider has not before such date filed the required reports in proper form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1107. Confidentiality

All reports, notices, communications, information, records and data made or given to the executive director or Office of Risk Management pursuant to the provisions of this Chapter shall be deemed privileged and confidential by and in the possession of the executive director and Office of Risk Management and their agents and contractors, and, unless ordered by a court of competent jurisdiction after a contradictory hearing, shall not be disclosed to any third party pursuant to request, subpoena or otherwise, without the express written authorization and consent of the person, office or entity making or giving, or originally possessing, any such reports, notices, communications, information, records or data. This rule shall not, however, prohibit disclosure or publication after prior consent of the board of aggregated information or data from which information or data relative to individual health care providers may not be discerned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 13. Fund Data Collection, Maintenance; Accounting and Reporting

§1301. Fund Data Collection, Maintenance

All information and data collected by or reported to the fund, relating to the administration, operation or defense of the fund, shall be recorded and maintained by the board. All of such information and data shall to the extent reasonably possible, be electronically computer database stored and maintained so as to be readily and efficiently accessible for utilization in the processing of applications for enrollment, in establishment and adjustment of claim reserves and reserves for incurred but not reported claims, in the preparation and analysis of claims experience data in connection with the development of surcharge rate filings, and in the defense of the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1303. Fund Accounting

The executive director shall be responsible for maintaining accounts and records for the fund as may be necessary and appropriate to accurately reflect the financial condition of the fund on a continuing basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1305. Annual Budget

The executive director shall annually, on or before December 1, project revenue and expense budgets for the fund

for the succeeding fiscal year in accordance with the provisions of R.S. 39:21-38. Such budget shall reflect all revenues projected to be collected or received by or accruing to the fund during such fiscal year, together with the projected expenses of the administration, operation and defense of the fund and satisfaction of its liabilities and obligations. Such budgets shall be submitted to the board for its approval and, as approved by the board, submitted on or before the following January 5 to the governor, the joint legislative committee on the budget, and the legislative fiscal office, in accordance with R.S. 39:33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1307. Appropriation Request

The executive director shall, on or before December 1 of each year, prepare an appropriation request, based on the annual budget prepared pursuant to §1305 of these rules, for approval by the board. The appropriation request on behalf of the fund, in accordance with R.S. 40:1299.44, shall be transmitted to the governor by the board on or before December 31 of each year for the succeeding fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1309. Periodic Reports

The executive director shall prepare or cause to be prepared, within 30 days of the conclusion of each calendar quarter, statements of the financial condition of the fund at the end of such calendar quarter and for the period then-ended. Such statement may be prepared, at the election of the executive director, in accordance with the statutory accounting principles applicable to liability insurance companies authorized to do business in this state or in accordance with generally accepted accounting principles relating to accounting for governmental funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1311. Annual Report

On or before March 1 of each year, the executive director shall cause to be prepared an annual statement of the financial condition of the fund at December 31 of the preceding year, which statement shall be substantially in the form of the annual report required to be filed by liability insurance companies authorized to do business in this state, and which statement shall have been audited or reviewed by the legislative auditor or by an independent certified public accountant. Such statement shall be submitted to the governor, the board, and the legislature on or before March 1 of each year, and shall be a public record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 15. Defense of the Fund

§1501. Claims Defense

A. Through its executive director, the board shall contract with the Office of Risk Management for the administration and processing of claims against and legal defense of claims against the fund. Pursuant to such contract, the Office of Risk Management shall be responsible, and accountable to the board, for coordination and management of defense of the fund against claims to the extent of the responsibilities imposed on the board by the act, including legal representation of the fund through contracted attorneys at law. Without limitation on the scope of such responsibility, the Office of Risk Management shall be specifically responsible for:

1. evaluating all malpractice claims made under the act against enrolled health care providers to the potential liability of the fund;

2. recommending, fixing, establishing and periodically modifying as required appropriate reserves against claims made against enrolled health care providers or the fund subject to the approval of the board;

3. retaining, subject to qualifications and standards prescribed by the board in its contract with the Office of Risk Management, and supervising the services of, attorneys at law to defend the fund against claims;

4. review and approval of fee and costs statements for services rendered by attorneys at law retained to defend the fund, ensuring that such statements accurately reflect services reasonably necessary or appropriate to the defense of the fund;

5. supervision and coordination of the defense of claims against or involving the fund by attorneys retained and representing enrolled health care providers;

6. negotiating and recommending reasonable and appropriate compromises and settlements of the fund's liability respecting any claim against the fund;

7. maintenance of current, accurate and complete records and data on all pending and concluded claims against or involving the fund; and

8. the discharge and performance of such other duties, responsibilities, functions and activities as are provided in the board's contract with the Office of Risk Management.

B. All authority for the defense of the fund vested in the board by the act is hereby delegated to the Office of Risk Management. In the exercise of such authority, the Office of Risk Management shall be accountable to, and subject to the superseding authority of, the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1503. Accounting; Budget

A. All expenses of the Office of Risk Management incurred in the review, adjustment, legal defense, disposition, settlement or payment of individual claims, judgments, awards or settlements shall be accounted for and allocated by the Office of Risk Management among such respective claims.

B. All other expenses incurred by or on behalf of the Office of Risk Management in the performance of its duties pursuant to the act shall be accounted for by the Office of Risk Management in the performance of its duties pursuant

to the act shall be accounted for by the Office of Risk Management.

C. The Office of Risk Management shall, on or before November 1 of each year, prepare and submit to the executive director a projected expense budget for the Office of Risk Management for the projected expenses of such office in the performance of its duties pursuant to these rules during the next succeeding fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1505. Claim Reserves

A. Within 10 days of receipt of notice of a claim against or potentially involving liability of the fund, the Office of Risk Management shall establish a reserve against such claim, representing the total amount of compensation and compensation adjustment expenses which the fund is anticipated to be liable for and incur in respect of and allocable to such claim. Reserves respecting individual claims against the fund shall be established by the Office of Risk Management in consultation, as appropriate, with legal counsel representing the fund with respect to such claim, with legal counsel for the enrolled health care providers against whom the claim is primarily asserted, and with claims personnel managing such claim for the commercial insurers of the enrolled health care providers against whom the claim is asserted. Reserves respecting individual claims against the fund shall be adjusted from time to time as changing circumstances or evaluations may warrant, and all reserves shall be reviewed not less frequently than quarterly for necessary and appropriate adjustments. The Office of Risk Management shall give prompt notice to the executive director of the amount of reserves established with respect to each claim against or potentially involving liability of the fund and any adjustments to such reserves.

B. Promptly upon receipt of notice of a claim against an enrolled health care provider who is self-insured against professional liability claims, the Office of Risk Management shall evaluate and estimate the total amount of compensation and compensation adjustment and defense expenses which the enrolled health care provider is anticipated to be liable for and incur in respect of such claim. Such valuations shall be made by the Office of Risk Management in consultation, as appropriate, with the enrolled health care provider against whom the claim is asserted, with the claims handling consultant, if any, for the enrolled health care provider, with legal counsel, if any, for the enrolled health care provider, and with legal counsel, if any, representing the fund with respect to such claim. Such valuations and estimates shall be adjusted from time to time as changing circumstances or evaluations may warrant, and all self-insured claim valuations shall be reviewed not less frequently than quarterly for necessary and appropriate adjustments. The Office of Risk Management shall give prompt notice to the executive director of the valuation established with respect to each claim against self-insured enrolled health care providers and any adjustments to such valuations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1507. Settlement of Claims

Claims against the fund may be compromised and settled upon the recommendation of the Office of Risk Management and the executive director and the approval of the board. The executive director shall, however, have authority, without the necessity of prior approval by the board, to compromise and settle any individual claim against the fund for an amount not exceeding $10,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1509. Privileged Communications, Records

All communications made and documents, records and data developed between, by or among the board, executive director, Office of Risk Management, PCF general counsel, contracted legal counsel, and enrolled health care providers and their insurers respecting malpractice claims asserted against enrolled health care providers or the fund shall be deemed privileged and confidential and, unless so ordered by a court of competent jurisdiction after a contradictory hearing, shall not be disclosed to any third party, pursuant to request, subpoena or otherwise, without the express written authorization and consent of the person, office or entity making any such communication or originally possessing any such documents, records or data. This rule shall not, however, prohibit disclosure or publication by the board of aggregated information or data from which information or data relative to individual health care providers or individual claims may not be discerned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Chapter 17. Transitional Rules

§1701. Continuing Enrollment of Self-Insureds

A health care provider who or which is duly qualified and enrolled with the fund as a self-insured provider on and as of the effective date of these rules shall not be required to comply with the provisions of §507 of these rules respecting the amount and type of evidence of financial responsibility until:

1. 180 days from the effective date of these rules; or
2. the date on which such provider's enrollment with the fund next expires and the provider seeks renewal of such enrollment, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

§1703. Continuing Enrollment of Self-Insurance Trusts

A health care provider who or which is duly qualified and enrolled with the fund as a self-insurance trust on and as of the effective date of these rules shall not be required to comply with the provisions of §509 hereof respecting the approval of self-insurance trusts and demonstration of financial responsibility until:

1. 180 days from the effective date of these rules; or
2. the date on which such trust's enrollment with the

fund next expires and the trust seeks renewal of such enrollment, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.44D.(3).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Patient's Compensation Fund Oversight Board, LR 18: (February 1992).

Suanne Grosskopf
Executive Director

RULE

Department of Health and Hospitals
Board of Examiners for Nursing Home Administrators

In accordance with the provisions of R.S. 37:2501 et seq., and the Administrative Procedure Act, 49:950 et seq., the Board of Examiners for Nursing Home Administrators, hereby adopts a new set of comprehensive rules and regulations relative to licensing and nursing home administrators.

It is the intent of the board that the following rules and regulations supercede all previous rules and regulations promulgated by the board.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLIX. Nursing Home Administrators

Chapter 1. General Provisions
§101. Source of Authority; Title
§103. General Definitions
§105. Notification of Change
Chapter 3. Board of Examiners
§301. Meetings
§303. General Powers
§305. Officers and Duties
Chapter 5. Examinations
§501. Scheduling of Examinations and Re-examinations
§503. Pre-examination Requirements: Conditions Precedent
§505. Application for Examination
§507. Conditional Admission to Examination; Disqualification; Re-examination
§509. Subjects for Examination and Continuing Education
§511. Grading Examinations
Chapter 7. Administrator-in-Training (AIT)
§701. Program
§703. Preceptor
§705. Reports
§707. Board Monitoring
§709. Oral Examination
§711. Time Limitation
§713. Waivers
Chapter 9. Continuing Education
§901. Purpose
§903. Requirements
§905. Registration of Institutions as Providers of Continuing Education Courses
§907. Approval of Programs of Study
§909. Exception
Chapter 11. Licenses
§1101. License Form
§1103. Registration of Licenses and Certificates
§1104. Penalties
§1105. Refusal, Suspension and Revocation of License
§1107. Reciprocity
§1109. Restoration and Reinstatement of Licenses
§1111. Display of Licenses and Registration Certificates
§1113. Duplicate Licenses
Chapter 13. Complaints and Hearing Procedures
§1301. Registration of Complaints
§1303. Hearing Procedures
§1305. Conduct of Formal Hearings
Chapter 15. Ethics
§1501. Board's Code of Ethics

Copies of the full text of these rules may be obtained through the Office of the State Register, 1051 Riverside North, Suite 512, Baton Rouge, LA.

Winborn E. Davis
Executive Director

RULE

Department of Health and Hospitals
Office of Management and Finance
Division of Policy and Program Development

The Department of Health and Hospitals, Office of Management and Finance, Division of Policy and Program Development, is adopting the following rule in order to implement Act 394 of the 1991 Regular Session of the Louisiana Legislature.

Title 48
PUBLIC HEALTH - GENERAL
Part I. General Administration
Subpart 9. Primary Health Services

Chapter 151. Grants
§15103. Funding and Eligibility

A.1. The Department of Health and Hospitals, Division of Policy and Program Development will accept letters of intent from applicants who are interested in obtaining primary care clinic grants. Eligible applicants include existing federally-funded community health centers or public or private organizations located in federally designated medically underserved areas. All interested applicants must submit a letter of intent prior to a completed application kit.

2. Primary care clinic grant application kits used by the Department of Health and Hospitals will include the following major sections: project description, project plan and project budget. Application kits may be obtained by sending letters of intent to the Department of Health and Hospitals' Division of Policy and Program Development, Box 1349, Baton Rouge, LA 70821-1349. Completed application kits must be returned to the same address.

3. Applications for primary care clinic grants will be competitive. The Department of Health and Hospitals will select from competing applications using the following evaluation criteria: justification/need for the project—degree of

medical underservice in the proposed project service area (15 points); degree to which the project targets the medically underserved population identified in the needs assessment section of the proposal (15 points); description of delivering and networking quality primary health services, including services for patients without the ability to pay (15 points); verification and description of sound management and finance plans, including reasonable project budget (15 points); assurance(s) regarding project success—description of clinical performance and clinical outcome indicator (15 points); degree of community-based support for the project (15 points); and the applicant's previous experience in the delivery of primary care services (15 points).

4. Primary care clinic grants awarded by the Department of Health and Hospitals may not exceed $150,000 apiece.

B. The Department of Health and Hospitals will accept requests from local health agencies or communities for state matching funds for physician salary guarantees of $100,000 annually in salary and benefits to assist in recruiting or retaining primary care physicians in local communities and rural areas. State salary subsidies may not exceed $50,000, and the local agency/community must demonstrate its ability to at least match the state amount. The local agency/community match may include but is not limited to cash; fringe benefits; rent; clerical, medical records, and billing support; continuing education stipend(s); and medical malpractice coverage.

1. In implementing this provision of Act 394, the Department of Health and Hospitals will contract directly with local health agencies, who in turn contract with physicians. As such, local health agencies must submit with their request for assistance under this provision, a copy of a proposed contract with a physician. Such contract must address the $100,000 guarantee.

2. It should be noted that the Department of Health and Hospitals anticipates that it will make no payments under this recruitment/retention incentive until the physician's actual received income and benefits are reconciled against his/her contract guarantees.

3. Should the number of requests under this provision exceed the available funds, the Department of Health and Hospitals reserves the right to prioritize requests based on the health professional shortage area's ratio of population to primary care physicians.

C. The Department of Health and Hospitals will accept letters of intent from existing federally-funded community health centers or public or private organizations located in local communities or rural areas that are interested in obtaining a demonstration grant to fund a project designed to innovatively, efficiently, and effectively develop and provide needed primary health care.

1. The Department of Health and Hospitals anticipates awarding demonstration grant(s) to innovatively develop primary care services in rural areas and local communities, including but not limited to such projects as the establishment or acquisition of mobile health clinics. The amount of available funds for this purpose is limited, and the grantee will be required to provide a 25 percent match to the funds, i.e., $300,000 state and $100,000 applicant.

2. Completed proposals must be sent to the Division of Policy and Program Development, Box 1349, Baton Rouge, LA 70821-1349. The proposal format should be determined by the applicant and should clearly describe the proposed project's goals and objectives and strategies to accomplish the goals and objectives. Additionally, the proposal should address a needs assessment, a management plan, a detailed budget, and budget justification. The proposal, including any appendices, may not exceed 50 typed double-spaced letter-size pages.

D. The Department of Health and Hospitals will entertain requests for state matching funds for federal grants for projects to provide community-based health services to indigent or low-income persons, as proposed in a federal grant application proposal.

E. It should be noted that the provisions of this rule are contingent upon the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2194-2198.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 18: (February 1992).

J. Christopher Pilley
Secretary

RULE

Department of Health and Hospitals
Office of Public Health

The Department of Health and Hospitals, Office of Public Health, has adopted the following rule in accordance with Louisiana Act 1054 of the 1991 Regular Legislative Session regarding confidentiality, consent, and disclosure of HIV testing to become effective April 20, 1992.

The purpose of Act 1054 is to create guidelines for HIV testing which will assist health providers by clarifying procedures which will assure the confidentiality of HIV results in order to retain the full trust and confidence of those being tested so as to encourage the expansion of voluntary confidential testing.

Title 48
PUBLIC HEALTH - GENERAL
Part 1. General Administration
Subpart 7. Human Immunodeficiency Virus/AIDS
Chapter 135. HIV/AIDS Testing
§13501. Definitions

A. An HIV-related test is a test which is performed solely for the purpose of identifying the presence of antibodies or antigens indicative of infection with Human Immunodeficiency Virus (HIV) including but not limited to: HIV antibody ELISA, Western Blot and Immunofluorescent Assay (IFA) tests, HIV viral cultures, Polymerase chain reaction (PCR) test for detection of HIV, and HIV antigen tests.

B. HIV test result is the original document, or copy thereof, transmitted to the medical record from the laboratory or other testing site the result of an HIV-related test. The term shall not include any other note, notation, diagnosis, report, or other writing or document.

C. Contact is a sex-sharing or needle-sharing partner, a person who has had contact with blood or body fluids to which universal precautions apply through percutaneous in-

oculation or contact with an open wound, non-intact skin, or mucous membrane, or a person who has otherwise been exposed to an HIV infected person in such a way that infection may have occurred as defined by the Department of Health and Hospitals regulations based upon Center for Disease Control guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:38.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18: (February 1992).

§13503. Consent for Testing

A. Informational Provisions. Prior to the execution of informed consent, the health care provider requesting the performance of an HIV-related test shall provide to the subject of an HIV-related test, or, if the subject lacks capacity to consent, to a person authorized by law to consent to health care for the subject, an oral, videotaped, or written explanation of the nature of AIDS and HIV-related illness, as well as oral, videotaped, or written information about behavior known to pose risks for transmission and contraction of HIV infection. The consent form developed by the Department of Health and Hospitals, Office of Public Health, contains the minimal requirements for meeting these provisions as does the informational brochure developed for this purpose. If the information is given orally to the subject it should describe at a minimum:

1. the voluntary nature of the test;

2. measures for the prevention of exposure to, and transmission of HIV, including discussion of abstinence, monogamy, safer sex using condoms, cleaning needles, or other prevention measures needed by the patient as well as partner notification;

3. the accuracy and reliability of testing for HIV;

4. the significance of the results of such testing, including the potential for developing the Acquired Immunodeficiency Syndrome;

5. encouraging the individual, as appropriate, to undergo such testing;

6. the benefits of such testing, including the medical benefits of diagnosing HIV disease in the early stages and the medical benefits of receiving early intervention services during such stages;

7. the possibility that the subject may suffer discrimination if the results of the test are disclosed inappropriately.

B. Informed Consent

1. Except as otherwise provided herein, no person shall order the performance of an HIV-related test to be performed on a person at a licensed hospital without first receiving the written informed consent of the subject of the test if the individual has capacity to consent or, when the subject lacks capacity to consent, that of the person authorized by law to consent to health care for such individual except as provided herein or authorized or required by law or regulation. Louisiana law specifically authorizes minors to consent to care for sexually transmitted diseases without parental approval. The written form developed by the Department of Health and Hospitals, Office of Public Health, has been developed to fulfill the requirements of this provision. Adherence to these rules, regulations, and forms shall constitute a legal presumption that consent for testing was validly obtained. While other forms of written consent or verbal consent can be obtained there shall be no legal presumption that consent secured through such means will be deemed valid.

2. If an HIV-related test is to be performed on a person who is an outpatient, or tested at a licensed hospital laboratory by the delivery of blood sample for testing, the person ordering such tests shall first obtain the consent of the patient and specifically so state on the order or request form furnished to the hospital or hospital laboratory, and likewise indicate the patient's choice as to the anonymity (see Subsection D below); such statement and/or certification by the person ordering the test may be relied upon by the hospital or hospital laboratory without the necessity for a copy of such consent and/or election by the patient being furnished.

3. If the HIV-related test is to be performed on a person who is an inpatient in a licensed hospital, a written consent form, duly completed and signed by the patient, must be in the patient's chart prior to any steps in such HIV-related testing.

C. Verbal Informed Consent

If a person is ordering an HIV-related test on a client who is in a setting other than as an inpatient in a licensed hospital, he/she has the option of either first receiving the written informed consent of the subject (or authorized person as indicated above) as in Subsection A above, or receiving the verbal informed consent of a subject contemporaneously documented in writing in the medical record. Verbal informed consent should be immediately and contemporaneously documented in writing in the medical record of the person being tested. Minimal requirements of valid verbal consent include a discussion of the topics as contained in the written consent form as summarized by the following:

1. the voluntary nature of the test;

2. measures for the prevention of exposure to, and transmission of HIV, including discussion of abstinence, monogamy, safer sex using condoms, cleaning needles, or other prevention measures needed by the patient as well as partner notification.

3. the accuracy and reliability of testing for HIV;

4. the significance of the results of such testing, including the potential for developing the Acquired Immunodeficiency Syndrome.

5. encouraging the individual, as appropriate, to undergo such testing;

6. the benefits of such testing, including the medical benefits of diagnosing HIV disease in the early stages and the medical benefits of receiving early intervention services during such stages;

7. the possibility that the subject may suffer discrimination if the results of the test are disclosed inappropriately. Both the written consent form and the informational brochure developed by the Department of Health and Hospitals, Office of Public Health, contain (independently) the necessary written information which can be provided to the person being tested. The informational brochure contains some additional information which may be useful to the person being tested but it is not required to be given to the person being tested.

D. Anonymous Testing

A patient requesting the performance of an HIV-related test shall be provided an opportunity to remain anonymous by the use of a coded system with no correlation or identification of the individual's identity to the specific test request or results. A health care provider that is not able to provide this service shall refer, at no extra charge to the indi-

vidual seeking anonymity, to a site which does provide anonymous testing. These anonymous provisions do not apply to inpatients in hospitals. Providers can locate sites where this testing can be done anonymously through the Louisiana AIDS Hotline at 1-800-99AIDS9 or the local parish health unit.

E. HIV Testing Not Requiring Informed Consent

Informed consent is not necessary as follows:

1. by a health care provider/facility in procuring human body parts or blood for transplantation or transfusion;

2. for accredited research such that the identity of the subject remains anonymous and cannot be retrieved by the researcher;

3. on a deceased person to determine the cause of death or for epidemiologic purposes;

4. if, in the opinion of the health care provider requesting the test, the request for consent would be medically contraindicated;

5. a child taken into custody of the Department of Social Services where department officials have cause to believe the child is infected with HIV;

6. on a child when the child's attending physician or health care provider reasonably believes such test to be necessary in order to properly diagnose or treat the child's medical condition and documents such reason in the child's medical record;

7. on any person arrested, indicted, or convicted for crimes of aggravated rape, forcible rape, simple rape, or incest when required by a court to undergo an HIV related test;

8. for tests performed pursuant to R.S. 40:1299(D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:38.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18: (February 1992).

§13505. Disclosure of HIV-Related Test Results

A. Provision for Refusal of Disclosure. Except as otherwise provided by law or regulation, no person who obtains, retains, or becomes the recipient of confidential HIV test results in the course of providing any health or social service or pursuant to a release of confidential HIV test results may disclose such information pursuant to a written authorization to release medical information when the authorization contains a refusal to release HIV test results. The form developed by the Department of Health and Hospitals, Office of Public Health, for the authorization for the release of confidential information has been developed in accordance with the Administrative Procedure Act for the release of medical information allowing a person to refuse to disclose HIV test results.

B. Disclosure of HIV Test Results without the Subject's Consent

HIV test results may be released to the following entities without authorization from the subject (or the person authorized by law to consent to health care for the subject);

1. to any person to whom disclosure of medical information is authorized by law without the consent of the patient;

2. to a health care facility/provider or employee thereof which:

a. is permitted access to medical records;

b. is authorized to obtain HIV test results; or

c. maintains or processes medical records for billing or reimbursement purposes.

3. To a health care facility/provider or employee thereof when knowledge of HIV test results is necessary to provide appropriate care or treatment and afford the provider an opportunity to protect themselves from transmission of the virus.

4. to a health care facility/provider or employee thereof in relation to use of body parts for medical education, research, therapy, or transplantation;

5. to a health care facility staff committee, accreditation or oversight review organization authorized to access medical records;

6. to a federal, state, parish, or local health officer when the disclosure is mandated by federal or state law;

7. to an agency or individual in connection with the foster care programs of the Department of Social Services or to an agency or individual in connection with the adoption of a child;

8. to any person to whom disclosure is ordered by a court of competent jurisdiction;

9. to an employee or agent of the Board of Parole of the Department of Public Safety and Corrections (or of its office of parole) to the extent the employee or agent is authorized to access records containing HIV test results;

10. to a medical director of a local correctional institution to the extent he/she is authorized to access records containing HIV test results;

11. to an employee or authorized agent of the Department of Social Services, Office of Rehabilitative Services;

12. to an insurer, insurance administrator, self-insured employer, self-insured trust, or other person or entity responsible for paying or determining payment for medical services to the extent necessary to secure payment for those services.

C. Disclosure of HIV Test Results by a State, Parish, or Local Health Officer. A state, parish, or local health officer may disclose confidential HIV test results when disclosure is specifically authorized or required by state law, disclosure is made pursuant to a release of confidential HIV test results, disclosure is requested by a physician pursuant to Subsection E below, or disclosure is authorized by a court order.

D. Disclosure by Persons to whom HIV Test Results have been Disclosed. Except for the individual or a natural person who is authorized to consent to health care for the individual, no person to whom confidential HIV test results have been disclosed pursuant to this Part shall disclose the information to another person except as authorized by this Part.

E. Notification of Contacts

A physician may, but is not obligated to, notify a contact of an HIV infected person if:

1. the physician reasonably believes the disclosure is medically appropriate and there is a significant risk of infection to the contact;

2. the physician has counseled the infected patient, if alive, regarding the need to notify the contact, and the physician reasonably believes the patient will not inform the contact;

3. the physician has informed the patient, if alive, of his or her intent to make such a disclosure and has given the patient the opportunity to express a preference as to whether the disclosure should be made by the physician directly or to a public health officer for the purpose of disclosure. This

preference shall be honored by the physician. When making the disclosure, the physician or the public health officer shall not disclose the identity of the patient to the contact. A physician shall have no obligation to identity or locate any contact.

F. Other Disclosures Authorized by Law. A physician may, upon the consent of the parent or guardian, disclose confidential HIV test results to a state, parish, or local health officer for the purpose of reviewing the medical history of a child to determine fitness of the child to attend school. A physician may disclose confidential HIV test results pertaining to a patient to a person authorized by law to consent to health care for the patient when the physician reasonably believes the disclosure is medically necessary in order to provide timely care and treatment for the patient and, after appropriate counseling as to the need for such disclosure, the patient has not and will not inform the person authorized by law to consent for health care. The physician shall not make such disclosure if, in the judgment of the physician, the disclosure would not be in the best interest of the patient or of the individual authorized by law to consent for such care and treatment. Any decision or action by a physician pursuant to this Subsection and the basis thereof shall be recorded in the patient's medical record. A physician may choose not to disclose the results of a confidential HIV test to a person upon whom such a test has been performed when in the medical opinion of the physician the disclosure of such results would be medically contraindicated.

G. Court Authorization for Disclosure of Confidential HIV Test Results

1. Only a court of competent jurisdiction shall issue an order for the disclosure of confidential HIV test results.

2. A court may grant an order for disclosure if:

a. there is a compelling need for adjudication;

b. there is clear and imminent danger to an individual;

c. there is clear and imminent danger to the public health;

d. the applicant is lawfully entitled to the disclosure.

3. The court order authorizing disclosure shall direct communications to be sealed and shall direct further proceedings to be conducted in camera so as to protect the subject's confidentiality.

4. Adequate notice shall be given to those from whom disclosure is requested to allow them to prepare a written or personal response unless there is a clear and imminent danger to an individual. A court must weigh the compelling need for disclosure against the privacy interest of the protected individual and against the public interest which may not be served by disclosure which deters future testing or treatment or which may lead to discrimination.

5. No subpoena for hospital or other medical records shall be construed as a court order for disclosure of HIV-related test results unless accompanied by a copy of a court order authorizing the issue of a subpoena for such test results, after compliance with this Subsection. No release by a hospital or other health care provider made pursuant to and in compliance with a subpoena which is valid on its face, shall be considered to be in violation of this Section.

6. An order shall limit disclosure to necessary information and limit disclosure to those persons whose need for the information is the basis for the order and specifically prohibit additional disclosure by such persons to other persons, regardless of whether they are parties to the action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:38.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18: (February 1992).

§13507. Regulation of Practices of Insurers' and of Practices of Other Entities' and Individuals' Interacting with Insurers Relating to HIV-Related Testing or HIV Test Results

With the exception of §13505.B.12, in the case of a person applying for or already insured under an insurance policy who will be or has been the subject of a test to determine infection for human immunodeficiency virus (HIV), all facets of insurers' practices in connection with HIV-related testing and HIV test results and all facets of other entities' and individuals' interactions with insurers relating to HIV-related testing or HIV test results shall be governed exclusively by Title 22 of the Revised Statutes of 1950 and any regulations promulgated pursuant thereto by the commissioner of the Department of Insurance who shall have authority to promulgate such regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:38.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18: (February 1992).

§13509. Forms

The Department of Health and Hospitals, Office of Public Health has developed forms for obtaining informed consent for HIV testing, for release of medical information, and a brochure to provide information to a person being tested for HIV pursuant to Act 1054. These forms are not included in the final rules for this act so that they can be updated as information regarding HIV and AIDS expands. Copies of these forms are available from the HIV/AIDS Services Program, Office of Public Health, 325 Loyola Avenue, Room 618, New Orleans, LA 70112.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:38.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 18: (February 1992).

J. Christopher Pilley
Secretary

RULE

Department of Health and Hospitals
Office of the Secretary
Department of Social Services
Office of the Secretary

The Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, is adopting the following rule in order to implement Act 378 of the 1989 Regular Session of the Louisiana Legislature and Act 1011 of the 1991 Regular Session of the Louisiana Legislature.

Title 48
PUBLIC HEALTH - GENERAL
Part I. General Administration
Subpart 11. Community and Family Support System
Chapter 161. Community and Family Support System Cash Subsidy

§16101. Introduction

The first and primary natural environment for all people is the family. Children, regardless of the severity of their disability, need families and enduring relationships with adults in a nurturing home environment. As with all children, children with developmental disabilities need families and family relationships to develop to their fullest potential. Services for persons with developmental disabilities should be responsive to the needs of the individual and his family, rather than fitting the person into existing programs. Family Supports are those supports that enable a family to keep their child with developmental disabilities at home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16103. Definitions

A. *Agency* — the Department of Health and Hospitals, Office of Human Services, Division of Mental Retardation/ Developmental Disabilities or Division of Mental Health, or the Office of Public Health, Handicapped Children's Services, which will administer the cash subsidy program for the population it is designated to serve.

B. *Cash Subsidy* — a monetary payment to eligible families of children with developmental disabilities to offset the costs of services and equipment.

C. *Child* — an individual under the age of 18.

D. *Department of Education 1508 Evaluation* — the evaluation completed on a child for the purpose of determining eligibility for special educational services and classifying the child by disability. For infants and toddlers this may be called a Multi-disciplinary Evaluation for Part H Services.

E. *Developmental Disabilities* — a severe, chronic disability of a person which:

1. is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. is manifested before the person attains age 22;
3. is likely to continue indefinitely;
4. results in substantial functional limitations in three or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency; and
5. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

F. *Individualized Education Program (IEP)* — a written statement for each child with a disability which is developed in a meeting by a representative of the local educational agency, the teacher, the parents or guardian of such child, and that child, whenever appropriate.

G. *Individualized Family Services Plan (IFSP)* — a written statement for each child with a disability which is developed in a meeting by a representative of the local educational agency, the teacher, the parents or guardian of such child, and that child, whenever appropriate.

H. *Interagency Service Coordination (ISC) Process* — the interagency process in cooperation with the Children and Adolescent Special Services Project which involves children and their families in a multidisciplinary case review to generate a Family Service Plan which assures appropriate and coordinated care for those children with severe emotional and behavioral impairments who are not adequately served by the routine services of a single agency and therefore require extensive interagency collaboration.

I. *Family Supports* — those supports that enable a family to keep their child with developmental disabilities at home.

J. *Parent/Guardian* — a child's natural or adoptive mother or father or the person who is legally responsible for the care and management of the child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16105. Eligibility for Cash Subsidy

A. All applicants, aged five and above, must meet the criteria herein established for ''developmental disability'' and severity of disability.

B. There shall be no financial criteria for eligibility for the cash subsidy.

C. The child must be residing, or expected to reside, with his or her parent or guardian. The family must currently reside in the state of Louisiana to be eligible for the cash subsidy.

D. Adopted children are eligible for the cash subsidy, including those families who are receiving a specialized adoption subsidy.

E. Families who have more than one child who meet the eligibility criteria will be eligible for the cash subsidy amount for each child.

F. Children residing in foster care or specialized foster care are not eligible for the family cash subsidy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16107. Application Procedures and Waiting List for Cash Subsidy

A. Funding for the cash subsidy shall be divided among the three participating agencies, the Division of Mental Retardation/Developmental Disabilities and the Division of Mental Health, in the Office of Human Services, and the Handicapped Children's Services Program, in the Office of Public Health, according to a method of distribution established by the Department of Health and Hospitals.

B. Families receiving cash subsidies through the two family support pilot projects funded by the Louisiana State Planning Council on Developmental Disabilities shall receive priority in allocations of cash subsidies in those regions in which they have established eligibility. Application must be made according to guidelines established in this document.

C. Applications for cash subsidy will be available from

the regional offices of the Division of Mental Retardation/ Developmental Disabilities and the Office of Public Health, Handicapped Children's Services Program, or regional mental health centers of the Division of Mental Health. Applications may be requested by phone and will be mailed by the next working day.

D. Applications shall be completed by the parent or guardian.

E. To be deemed complete, applications must be signed by the parent and the following supporting documents must accompany the application:

1. the Program/Services page of the child's Individualized Education Program (IEP) which states the child's exceptionality, or, if an IEP has not yet been completed on the child, the Department of Education 1508 Evaluation; or

2. applications for infants and toddlers will be accepted with the following supportive documentation: The Program/Services page of the child's Individualized Education Program (IEP) or Individualized Family Services Plan (IFSP) which states the child's exceptionality, or, if an IEP or IFSP has not yet been completed on the child, the child's Department of Education 1508 Evaluation or Multi-Disciplinary Evaluation for Part H Services, or, documentation from a licensed medical professional that an infant or toddler meets Part H eligibility criteria;

3. documentation from a licensed medical or mental health professional that a child meets the 1508 eligibility criteria for Autism will be accepted even in the absence of a 1508 Evaluation identifying Autism as an exceptionality; or

4. the following documentation will be accepted to complete the application for Emotional Disturbance/Behavioral Disorder, even in the absence of a 1508 evaluation that does not identify this as an exceptionality: a treatment plan from a licensed community mental health center; or evidence of present participation of child/family in an Interagency Service Coordination (ISC) process; or an evaluation report from a private licensed mental health professional which states that the criteria for Emotional/Behavioral Impairment (EBI) definition of the Department of Education 1508 Evaluation has been met.

F. The application shall be mailed to one of the offices listed above, where it will be logged in according to the postmark date. Applications will not be accepted in person.

G. If multiple applications are received with the same postmark date, a random process will be used to assign the order in which applications are processed.

H. There shall be no closing date for applications.

I. Once subsidies are allocated, applications will be placed on a waiting list for screening. Families will be notified within 30 days of the status of their application.

J. In the event that funding becomes available, either through terminations of contracts or additional funding, the next applicant from the list will be screened for eligibility and notified of the effective date of their participation as approved.

K. Completion of a new application will be required annually or at the time that new funding becomes available if the original application is more than a year old.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16109. Eligibility Determination

A. Applicants considered automatically eligible are those identified by supportive documentation with the following handicapping conditions: autism, deaf/blind, profoundly mentally handicapped, severely mentally handicapped, and multi-handicapped. Children so identified are not subject to the screening process listed below.

B. Applicants who have supportive documentation of the following handicapping conditions will be screened to determine their categorization as developmentally disabled and the severity of their disability: behavior disordered/emotionally disturbed, orthopedically handicapped, health impaired, handicapped infants and toddlers and non-categorical preschool handicapped.

C. A Screening Instrument specific to category of disability must be completed for all applicants who are subject to the screening process. The Screening Instrument specific to category of disability contains a minimum number of criteria for determination of severity of disability for each of the handicapping conditions listed, and must be completed in its entirety. Beginning at age five, the Developmental Disability Checklist must also be completed for children making application.

D. The applicant is to be notified in writing when eligibility is determined and of the right to appeal the decision and the process of appeal as well as other services that are available through the regional office systems of the Division of Mental Retardation/Developmental Disabilities and Office of Public Health, Handicapped Children's Services Program, and regional mental health centers of the Division of Mental Health.

E. If an application is received by an agency that cannot serve the child because of the nature of the disability, the agency will forward the application to the appropriate agency by the next working day, with a memorandum which includes the original envelope so that the original postmark can be used by the agency properly receiving the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16111. Terminations

A. Reasons for terminations from the cash subsidy program include: family moves out of state; family requests termination of subsidy; child is placed out of the home; the child dies; the child turns age 18; the child is judicially removed from the home; termination of or limitation in funding for the program; and the family fails to comply with the terms of the cash subsidy contract.

B. Families may also be terminated from participation in the cash subsidy program for fraud, defined as a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to another. Fraud may also result from silence or inaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

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

18: (February 1992).

§16113. Appeals

A All persons applying to the family cash subsidy program shall have access to an appeals process in accordance with procedures outlined by the Department of Health and Hospitals in cooperation with the Department of Social Services.

B. Individuals and their families will be informed of their rights of appeal at the point of application for subsidy, eligibility determination, termination of subsidy and at the point of annual review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16115. Cash Subsidy Payment Procedures

The cash subsidy payment is provided for the purpose of assisting families in meeting those needs and expenses that enable their child to remain at home and to keep the family intact.

1. The amount of the cash subsidy shall be equivalent to the monthly maximum Supplemental Security Income payment available in Louisiana for an adult disabled recipient living in the household of another. Changes in this rate will be tied to the figure in SSI payments in the state.

2. No third party agreement will be entered into by the agency; no advance payments will be authorized.

3. If, for any reason, a contract is overpaid, the situation shall be handled in accordance with the Department of Health and Hospitals established procedures for recoupment.

4. It is the payee's responsibility to notify the originating office if a payment check is lost, stolen or not received by the fifteenth day of the month.

5. If for any reason a payment check is not located, the agency will either issue a replacement check or defer action until more information can be obtained.

6. The first cash subsidy payments will begin in January, 1992.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16117. Program Records

A. Each agency shall have a written policy concerning confidentiality of and access to records and the time period for maintaining the record.

B. Each agency shall maintain a record on each applicant for cash subsidy payments regardless of the final determination of eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16119. Annual and Ongoing Contract Review

A. Each cash subsidy record shall be reviewed annually.

B. The originating office shall mail an annual parent report to the family, to be returned to that office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16121. Ongoing Monitoring

Staff from the originating office will maintain contact with families at least every 90 days. If the child is enrolled in a licensed case management program, the responsible case manager will maintain this frequency of contact and report changes in status to the originating office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

§16123. Annual External Program Evaluation

An annual external evaluation which shall be based on consumer satisfaction and performance indicators shall be completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:772 and R.S. 36:258(E)(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and by the Department of Social Services, Office of the Secretary, LR 18: (February 1992).

J. Christopher Pilley
Secretary, Health and Hospitals

Gloria Bryant-Banks
Secretary, Social Services

RULE

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, is adopting the following rule in the Medical Assistance Program. The rule was published as a notice of intent on November 20, 1991 (Volume 17, Number 11, page 1144).

A rule has previously been adopted as published in the *Louisiana Register* on November 20, 1991 outlining proposed regulations for the review of urine drug screening laboratories. During the Third Extraordinary Session, 1991 of the Louisiana legislature the Louisiana Senate passed Senate Concurrent Resolution Number 5 which urges and directs the Department of Health and Hospitals to adopt rules and regulations which conform to the substance of Senate Bill Number 899 of the 1991 Regular Session of the Louisiana Legislature. This bill proposed the creation of two classes of urine drug screening laboratories, Class A which contains all laboratories which provide urine drug screening services that are not contained in Class B, and Class B which contains employer testing programs only. Class A lab-

oratories shall be required to meet the personnel standards outlined in the rule as published. Class B laboratories shall meet different personnel standards as outlined in this rule, otherwise both classes of laboratories shall meet the same requirements for approval by the Department of Health and Hospitals.

RULE

Urine drug screening laboratories in Louisiana shall be of two different classes. Class A which contains all laboratories which provide urine drug screening services that are not contained in Class B, and Class B which contains employer testing programs which are to be used to test only an employer's own employees, employees of subsidiary companies, and prospective employees. Class A Laboratories shall be required to meet the personnel standards outlined in the rule as published in the *Louisiana Register* November 20, 1991, page 1144. Class B laboratories shall meet the following personnel standards outlined below. Other requirements for approval by the Department of Health and Hospitals remain the same for both classes.

PERSONNEL

Personnel involved in urine drug screening in Class B laboratories shall meet the requirements specified in this Section of these rules and regulations. Class B screening laboratories shall meet either of the following:

1. employ an on-site technical laboratory supervisor who shall assume professional, organizational, educational, and administrative responsibility for the overall operation of the employer testing program, and who shall, at a minimum, have earned a Bachelor of Science degree; have at least two years employment experience in toxicologic analysis; and annually attend at least 16 hours in continuing education courses in the field of forensic urine drug testing; and employ a laboratory drug screening technician who shall, at a minimum, have earned a high school diploma or equivalent; have a degree of skill commensurate with his or her training, education and technical ability; and annually attend at least eight hours in continuing education courses in the field of forensic urine drug testing, or

2. employ a laboratory drug screening technician who shall, at a minimum, have earned a high school diploma or equivalent; have a degree of skill commensurate with his or her training, educational and technical ability; and, if using drug-testing instrumentation, complete a manufacturer's training program that shall assure competency in test performance, and annually attend at least 16 hours in continuing education courses in the field of forensic urine drug testing.

J. Christopher Pilley
Secretary

RULE

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, is adopting the following rule in the Medical Assistance Program. This rule was published as a notice of intent on November 20, 1991 (Volume 17, Number 11, page 1145).

Regulations concerning sanctions for nursing facilities, non-compliance with federal and state regulations, conditions of participation in the Medicaid program and accepted health care standards have previously been published. The purpose of the proposed rule is to provide public notice of the conditions and progression of severity in administering sanctions. Available remedies have been identified and the conditions under which they may be applied are spelled out, depending on the severity of the violation(s).

A copy of these final rules may be obtained by contacting the Office of the State Register, 1051 Riverside North, Baton Rouge, LA 70804, or by contacting the Department of Health and Hospitals at the address below.

J. Christopher Pilley
Secretary

RULE

Department of Public Safety
Board of Private Security Examiners

In accordance with R.S. 37:3270 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Private Security Examiners has promulgated new rules under LAC 46:LIX, Chapters 1-9 and in accordance with a notice of intent published in the *Louisiana Register*, Volume 17, Number 11, dated November 20, 1991.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Board of Private Security Examiners
Part LIX. Private Security Examiners
Chapter 1. Definitions, Organization, Board Membership and General Provisions

§101. Definitions

A. *Date of Hire* - date applicant begins performing the functions and duties of a security officer.

B. *Dog handler* - an individual who is accompanied by a trained protection dog while performing the duties of a security officer as defined in R.S. 37:3272. He shall be considered unarmed unless he falls under the definition of an armed security officer.

C. *Special event* - a temporary security assignment lasting 20 calendar days or less.

D. *Weapon* - any firearm or baton approved by the board.

E. In addition to the above definitions, terms outlined in these rules shall be found in R.S. 37:3272.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:846 (October 1989), LR 18: (February 1992).

§103. Organization, Board Membership and General Provisions

A. The private security regulatory and licensing law (R.S. 37:3270, et seq.) shall be administered by the Board of Private Security Examiners, hereinafter referred to as the "board."

B. The official seal of the board consists of the Louisiana state seal with a pelican in the middle.

C. The board shall consist of nine members appointed by the governor for a term concurrent with the term of office of the appointing governor. No member of the board shall be employed by a person or company who employs any other member of the board.

D. The chairperson shall exercise general supervision of the board's affairs, shall preside at all meetings when present, shall appoint members to committees as needed to fulfill the duties of the board, and shall perform all other duties pertaining to the office as deemed necessary and appropriate.

E. The vice-chairperson shall perform the duties of the chairperson in his absence or other duties assigned by the chairperson.

F. Standing committees of the board are:

1. General Committee - duties to include special projects as authorized by the chairperson;

2. Finance Committee - duties to include periodic review of the budget, recommendations regarding the establishment of fees charged by the board, and recommendations to the board regarding all expenditures requested by the executive secretary in excess of $500; and

3. Ethics Committee - duties to include review of allegations and recommendations to the board regarding any alleged misconduct, incompetence or neglect of duty by board members.

G. Each board member shall have one vote on all motions. Proxy voting is not allowed.

H. The board shall appoint an executive secretary to serve as the chief administrative officer of the board. The executive secretary serves at the pleasure of the board and is a full-time employee of the board. He shall act as the board's recording and corresponding secretary and shall have custody of the records of the board; cause written minutes of every meeting to be kept and open to inspection to the public; keep the board's seal and affix it to such instruments and matters that require attest and approval of the board; act as treasurer and receive and deposit all funds; attest all itemized vouchers for payment of expenses of the board; make such reports to the governor and legislature as provided for by law or as requested by same; keep the records and books of account of the board's financial affairs; give at least 15 calendar days prior notice to all persons who are to appear before the board; sign off on Cease and Desist Orders; and any other duties as directed by the board.

I. The executive secretary may spend up to $500 for board purchases without prior approval by the board or chairperson, and in accordance with the Division of Administration's rules governing purchases.

J. Meetings shall be announced and held in accordance with the Administrative Procedure Act commonly referred to as the Public Meetings Law.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:11 (January 1989), LR 15:846 (October 1989), LR 18: (February 1992).

§105. Consumer Information

A. Minutes of all board meetings shall be made available to the public upon written request to the board. A monetary fee may be assessed in accordance with Division of Administration rules and regulations.

B. Complaints to the board shall be in writing, signed by the individual making the complaint, and include a means by which to contact the individual for investigative purposes.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 18: (February 1992).

Chapter 2. Company Licensure

§201. Qualifications and Requirements for Company Licensure

A. Licensing information packages may be obtained from the board by submitting in writing a request for such package. Request shall include the name, address and phone number of the person requesting this information.

B. An applicant for licensure shall meet all of the qualifications and requirements specified in R.S. 37:3276 in addition to the rules herein.

C. Applicant must possess a high school diploma, GED or equivalent work experience.

D. Applicant shall fill out and file with the board a notarized application form provided and approved by the board. If the applicant is a corporation, it shall be subscribed and sworn to by the qualifying agent.

E. In addition to the completed application, the following documentation shall be submitted to the board:

1. one set of classifiable fingerprints of the applicant or qualifying agent and/or of each officer, partner or shareholder who owns a 25 percent or greater interest;

2. letters attesting to good moral character from three reputable individuals, not related by blood or marriage, who have known the applicant or qualifying agent for at least five years;

3. copy of applicant's or qualifying agent's DD-214 military discharge papers showing type of discharge, if applicable;

4. copy of company's badge and insignia;

5. copy of occupational license from each city or parish in which that company or branch has security operations, if applicable;

6. a certificate of general public liability insurance in an amount of at least $25,000 with the state of Louisiana named as an additional insured;

7. articles of incorporation, if incorporated, and certificate of authority from the Louisiana secretary of state; and

8. $200 licensing fee, $20 application fee, $50 examination fee and $10 fingerprint processing fee.

F. It shall be unlawful for any individual to make an application to the board as qualifying agent unless that person intends to maintain and continues to maintain that supervisory position on a regular, full-time basis.

G. All material changes of fact affecting a company licensee must be communicated to the board in writing within 10 calendar days. These changes of facts include the following:

1. change in any of the principal corporate officers or noncorporate owners who hold a 25 percent or greater interest in the company, or qualifying agent, or any partner in a partnership;

2. change of business name, address or telephone

number; and

3. change of ownership if the business is a sole proprietorship.

H. Any change of the current listed principal officers in a corporation that is a licensee must be accompanied with a copy of the minutes electing the new officers and verification that these changes have been recorded with the secretary of state's office.

I. Branch Office. A branch office of a board-licensed company may voluntarily register with the board by submitting the following documentation:

1. a letter from the licensee authorizing the board to register the branch office under the licensee. Letter shall also include the name of the designated branch manager, branch office address and phone number;

2. a current list of active security officers, and their social security numbers, who are to be registered with the designated branch officer;

3. $100 annual licensing fee to cover administrative costs;

4. the board shall issue a license certificate to the branch office with an identifying branch office number.

J. Examination

1. All applicants who apply to the board for licensure are required to successfully pass a written examination administered by the board. The examination tests the applicant's knowledge of R.S. 37:3270 et seq., the board's rules and regulations and the security profession.

2. Applicants required to take the examination are those:

a. applying for an initial company license;

b. reinstating an expired license; and

c. applying as a new qualifying agent for an approved, licensed company.

3. The passing grade of the exam shall be 70 percent.

4. An applicant who does not successfully pass the examination may reapply to take the examination twice within a six-month period. If the applicant does not successfully pass the examination as required, the application shall be referred to the board for action.

K. Insurance Renewal. On or before the expiration date of the required general liability insurance policy, licensee shall submit to the board a new certificate of insurance showing that insurance has been renewed and there has not been any lapse in coverage.

L. License Renewal

1. A company license shall expire annually on the date of issuance. Date of issuance means the date application was submitted to the board.

2. To renew a company license, licensee must submit a $200 annual renewal fee to the board 30 days prior to the expiration date of license. If there have been any changes in the status of the company, then a new company application must also be submitted, along with a $20 application fee.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:846 (October 1989), LR 18: (February 1992).

Chapter 3. Security Officer Registration

§301. Qualifications and Requirements for Security Officer Registration

A. An applicant for registration shall meet all of the qualifications and requirements specified in R.S. 37:3283 in addition to the rules herein.

B. Applicant shall meet all of the qualifications of a licensee as defined in R.S. 37:3276, with the following exceptions:

1. may be a resident alien;

2. must be at least 18 years of age if registered unarmed, or if registered to carry a baton; and

3. must be at least 21 years of age if registered armed.

C. Applicant shall fill out and file with the board an application form provided and approved by the board.

D. In addition to the completed application, the following documentation on the applicant shall be submitted to the board:

1. one set of classifiable fingerprints;

2. copy of DD-214 military discharge papers showing type of discharge, if applicable; and

3. application fee and fingerprint processing fee.

E. Applicant must sign the application to verify that the information he is providing the board is correct.

F. Licensee shall review the application to insure that it has been properly completed and signed by the applicant. Licensee shall sign the application to certify that the applicant will be given the required training.

G. Licensee shall cut off the portion of the application identified as "temporary registration card," have the applicant complete required information, and instruct applicant to carry temporary registration card at all times while on duty. Temporary registration card is valid until applicant receives a permanent registration card from the board.

H. An applicant who will be registered to carry a weapon must be trained in that weapon prior to carrying such weapon on a job site and verification of training must be submitted by the licensee to the board at the time application is made. If the applicant has not been trained, then the licensee shall register the applicant as unarmed until such time as required training has been received and proof of training submitted to the board. If the applicant receives the required weapons training within 30 days from his date of hire, and submits proof of such training on a board training verification form, then the board will change the status of the applicant from unarmed and no fee will be required. If the training is received after 30 days, then a $10 status change fee must be submitted in accordance with the rule for status changes.

I. Licensee shall notify the board in writing within 10 calendar days of any change in an applicant's status, eligibility, address or phone number.

J. Dual Registration

1. A security officer who works for more than one licensed security company must register with the board for each individual company.

2. Each company a security officer is employed with shall submit an application marked "dual registration" and required application fee to the board within 20 days from date of hire.

3. Each company that a security officer is employed with is responsible for insuring that officer is trained in accordance with R.S. 37:3284 and the rules herein.

K. Registration Card

1. A registration card will not be issued until an investigation determines that the applicant meets the requirements to become registered and verification of training has been received by the board that the applicant has successfully

completed required training.

2. A registration card is valid for two years based on date of hire. It shall be in the form of a pocket card and shall be issued to the registrant through the licensee with whom he is employed. Registrant must sign the back of the card immediately upon receipt.

3. A registration card is the property of the Louisiana State Board of Private Security Examiners and must be surrendered to the board upon request.

4. Registration card classifications are as follows:

a. unarmed;

b. firearms;

c. firearms/straight baton;

d. firearms/PR-24 baton;

e. straight baton; and

f. PR-24 baton.

5. If lost or mutilated, registrant is held responsible. A $10 fee will be assessed to issue a replacement card and registrant shall submit in writing to the board his name, social security number, registration card number and circumstances surrounding loss or mutilation of card.

6. Prior to or after issuance of any registration card, the board may require documented evidence verifying the applicant meets, or continues to meet, all requirements to be registered with the board.

L. Reinstatement

1. A registrant who terminates employment from a licensee and is rehired within 30 calendar days by the same licensee may be reinstated by licensee submitting in writing a request to have registrant reinstated, accompanied by a $10 reinstatement fee.

2. Written request must provide the security officer's name, social security number, date of termination and date of reinstatement.

M. Renewal

1. The board will notify the licensee 60 days prior to the expiration date of the registration card of each registrant in their employ.

2. A renewal application and required renewal fee must be submitted to the board within 30 days prior to the expiration date of the registration card.

N. Special Event

1. Unarmed security officers may work special events a maximum of 20 calendar days within a six-month period of time prior to registering with the board.

2. Armed security officers must be registered with the board and have received all firearms training.

3. Licensee shall provide to the board within five calendar days after the event a list of security officers and their social security numbers who worked a special event.

O. Status Change

1. A registrant's status may be changed from unarmed to armed, or vice versa, by submitting a letter to the board requesting a status change with a $10 status change fee.

2. Firearms training verification must be received by the board before the officer's status can be changed to armed.

P. Transfer. When a registrant transfers from one licensee to another, the new licensee is responsible for insuring that the officer is trained, or has been trained in accordance with R.S. 37:3284 and the rules herein, and that proper documentation is, or has been, received by the board.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:11 (January 1989), LR 15:846 (October 1989), LR 18: (February 1992).

Chapter 4. Training

§401. Training Programs

All board-required training shall be administered by a licensed instructor. The board shall approve all training programs and shall develop training criteria outlining specific curriculum to be used in the instructing and training of all security officers.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:11 (January 1989), LR 15:846 (October 1989), LR 18: (February 1992).

§403. Classroom Training

A. Any security officer employed after September 1, 1985 shall complete, within 30 days from his date of hire, eight hours classroom training under a board-licensed classroom instructor.

B. Security officer, within three months from date of hire, shall complete an additional eight hours classroom training program which has been approved by the board.

C. Upon completion of each of the eight-hour segments of the prescribed training, a 50-question examination shall be given to each security officer by the board-licensed instructor. The first eight-hour examination shall be different than the second eight-hour examination, cover the required training topics, and be approved by the board prior to being administered. Minimum passing score is 70 percent.

D. All scores of such examinations must be recorded and submitted to the board on its prescribed training verification form within 10 calendar days from completion of training.

E. Security officers who have been registered in other states who have licensing requirements similar to Louisiana, and law enforcement officers identified in R.S. 37:3284 may attend a four-hour modular training program administered by a board-licensed instructor. Upon completion of the four-hour modular training, the officer shall take a 50-question examination and if the security officer successfully passes the examination, this modular training shall be considered the equivalent to the classroom training provided for in R.S. 37:3284 and rules herein. If the security officer does not successfully pass the examination, then he must go through the entire classroom training program.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety, Board of Private Security Examiners, LR 18: (February 1992).

§405. Firearms Training

A. Armed security officers, in addition to the training requirements outlined in R.S. 37:3284 and in the rules herein, shall complete 12 hours of firearms training and range qualifications by a board-licensed firearms instructor prior to working an armed assignment.

B. Upon completion of the prescribed firearms train-

ing, a written examination will be given to each security officer by the board-licensed firearms instructor. The examination shall cover the required training topics and be approved by the board. Minimum passing score is 70 percent.

C. Successful completion of firearms training also includes the security officer passing the board-required firearms proficiency course by achieving a minimum marksmanship qualifying score of 75 percent.

D. Annual refresher firearms training is due one year from the date of the last firearms training recorded at the board office.

E. Authorized Weapons. The following weapons are the only weapons authorized and approved by the board:

1. straight baton or PR-24 baton;

2. .357 caliber revolver, minimum four-inch barrel with .357 or .38 caliber ammunition or .38 caliber revolver, minimum four-inch barrel with .38 caliber ammunition only; and

3. 9 mm semiautomatic, minimum four-inch barrel, double action.

F. Handgun Proficiency Course

1. seventy-five percent required to qualify, 188 points out of 250 points.

2. standard police or security firearms target only.

3. the caliber weapon trained with must be the same caliber weapon security officer carries while on duty.

4. four yards; 12 shots, unsupported, point shooting, without sights; 45 seconds.

six shots, strong hand only

six shots, weak hand only

seven yards; two shots, unsupported, two-handed with sights; five seconds. (indexing these rounds)

twelve shots, unsupported; 60 seconds. two-handed with sights

twelve shots, unsupported; 60 seconds. two-handed with sights

fifteen yards; 12 shots, barricade, strong hand, 60 seconds. Two-handed with sights

six shots, standing right barricade

six shots, standing left barricade

G. Semiautomatic Handgun

1. Security officer must have successfully completed the board-required 12 hours initial firearms training with a revolver prior to being trained with a semiautomatic handgun.

2. A board-licensed semiautomatic firearms instructor must train the officer in the use of a semiautomatic handgun prior to him carrying such weapon on a job site. The board-licensed semiautomatic firearms instructor must meet the same qualifications of a firearm instructor as required by R.S. 37:3284.

3. Semiautomatic proficiency course used by the firearms instructor must be certified by the National Rifle Association, Department of Energy or P.O.S.T. and proof of such certification shall be submitted to the board for approval and verification.

H. Shotgun

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

2. Course of Fire

a. Five shots buckshot (nine pellets only), five shots slugs, 60 percent required to qualify out of 100 points possible on a NRA B-27 target. B-29 target may be used for 25 yards at 15 yards.

b. Scoring: two points for each hit (pellets or slugs) within the seven ring. One point for each hit outside the seven ring, in the black.

c. At the end of each stage of firing, all firearms will have their actions open, safeties on, with barrels up and muzzle above head.

d. Buckshot Stage

i. Fifteen yards; two rounds, standing from the shoulder; 10 seconds.

ii. Twenty-five yards; three rounds total from the shoulder; one round standing, two rounds kneeling. Time includes loading time with the shotgun starting from the "cruiser-safe" position (Chamber empty, magazine loaded, safety on.); 20 seconds.

e. Slug Stage

i. Twenty-five yards, two rounds total from the shoulder, one round kneeling, one round standing; 15 seconds;

ii. Twenty-five yards, three rounds total, from the shoulder; one round standing, two rounds kneeling. Starting from the "cruiser-safe" position; 20 seconds.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety, Board of Private Security Examiners, LR 18: (February 1992).

§407. Baton Training

A. Security officers carrying a straight baton as a weapon must successfully complete a minimum of eight hours of an initial straight baton training course approved by the board and administered by a board-licensed straight baton instructor prior to carrying such weapon on duty. Security officer must also successfully complete a four-hour annual refresher straight baton training program approved by the board.

B. Security officers carrying a PR-24 baton as a weapon must successfully complete a minimum eight hours of a pre-basic PR-24 baton training course approved by the board and administered by a board-licensed PR-24 baton instructor prior to carrying such weapon on post. Security officer must also successfully complete a four-hour annual refresher PR-24 baton training program approved by the board.

C. The board-licensed baton instructor must meet the same qualifications of a classroom instructor as required by R.S. 37:3284 and must possess a board-recognized law enforcement baton certification.

D. Annual baton refresher training is due one year from the date of the last baton training recorded at the board office.

E. Security officers trained in baton must successfully pass a written examination administered by a board-licensed baton instructor and achieve a minimum passing score of 70 percent. Examination score must be recorded and submitted to the board on its prescribed verification form within 10 calendar days from completion of training.

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Board of Private Security Examiners, LR 18: (February 1992).

§409. Instructor Requirements, Responsibilities and Liability

A. Instructor Fees

1. application fee - $20;
2. inhouse/outside classroom license fee - $50;
3. inhouse/outside firearms license fee - $75;
4. inhouse/outside baton license fee - $50;
5. transfer application fee - $20;
6. inhouse/outside classroom renewal license fee - $50;
7. inhouse/outside firearms renewal license fee - $75;
8. inhouse/outside baton renewal license fee - $50;
9. examination fee - $25; and
10. reexamination fee - $15.

B. An applicant applying for an instructor license who does not successfully pass the required examination may reapply to take the examination twice within a six-month period. If the applicant does not successfully pass the examination as required, he shall be denied.

C. Instructor Responsibilities and Liability

1. An inhouse instructor who is covered under his employer's company insurance policy shall be required to have his employer submit a letter to the board stating that he is covered under the company policy for the teaching of security officers.

2. Licensed instructors are required to keep on file for three years records of training tests and any other documentation that verifies the test scores achieved by security officers they trained.

D. License Renewal

1. Instructor licenses issued by the board shall be valid for two years. Expiration date is based on the date the license is approved and issued.

2. To renew an instructor license, instructor shall submit to the board a renewal application form provided by the board and the required renewal fee 30 days prior to the expiration date of license.

E. Insurance Renewal

1. On or before the expiration date of the general liability insurance policy, instructor shall submit to the board a new certificate of insurance showing that insurance has been renewed and there has not been any lapse in coverage.

F. License Classification. Instructor licenses are categorized as follows:

1. *Inhouse* - licensed with a security company and may only teach security officers employed with that company.

2. *Outside Limited* - licensed to teach students at a training academy or educational institution. Instructor may only teach students of that particular institution.

3. *Outside* - licensed to train anyone in the state of Louisiana.

G. License Transfer

1. An instructor may transfer his license to another company by submitting to the board a transfer application, $20 transfer fee, and proof of general liability insurance coverage.

2. An inhouse instructor who desires to become an outside instructor shall submit a new instructor application, $20 application fee, proof of general liability insurance and training program that will be used to teach the students.

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Board of Private Security Examiners, LR 18: (February 1992).

Chapter 5. Criminal Background Checks

§501. Criminal Background Checks

A. Dispositions

1. If an applicant has been convicted of any crime that would prevent him from meeting the qualifications of a licensee or registrant as specified in R.S. 37:3276, it shall be incumbent upon the applicant to submit with his application documentation showing proof that he has been pardoned for that crime.

2. If an applicant possesses an arrest record as issued by the Louisiana State Police, Bureau of Identification, without the disposition thereof, it shall be incumbent upon the applicant, within 30 days, to provide the written disposition of his arrest from the district attorney's office or the criminal clerk of court's office from the judicial district in which the arrest occurred.

3. If the applicant does not provide the written disposition as required, the board shall have sufficient cause to deny the application.

B. Denial of Application due to Conviction

1. If an applicant has a felony conviction, as evidenced by the background check run by the Louisiana State Police, Bureau of Identification, then his employment as a security officer must be terminated immediately unless he has provided the board with documentation showing proof that he has received a pardon or similar relief.

2. The board will notify the employer that the officer has been denied and it is incumbent upon the employer to submit to the board a termination notice within 10 calendar days after denial notification.

3. If the background check reveals a misdemeanor conviction that would disqualify the applicant under the provisions of R.S. 37:3270 through 3298 and the rules herein, he may continue to work pending the outcome of the appeal process.

4. If the applicant does not appeal the board's denial of his application due to his misdemeanor conviction, then the applicant must be terminated 30 days after receipt of written notice of denial from the board.

5. The board will notify the applicant and his employer if the application is denied and the reason therefor.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:11 (January 1989), LR 15:846 (October 1989), LR 18: (February 1992).

Chapter 6. Disciplinary Action

§601. Contested Proceedings

A. Before revoking or suspending a license or registration card, or imposing fines or costs over $500, the board will afford the applicant an opportunity for a hearing after reasonable notice of not less than 15 days, except in a case of a failure to maintain the required insurance or when a registrant is found carrying an unauthorized weapon while performing the duties of a security officer.

B. All requests for a hearing must be submitted in writing to the board.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 18: (February 1992).

§603. Final Decision and Orders

All final decisions and orders of the board shall be in writing and signed by the executive secretary or chairperson.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety, Board of Private Security Examiners, LR 18: (February 1992).

Chapter 7. Insignias, Markings, Restrictions

§701. Restrictions

A. No badge or insignia with the initials "SP" or "SO" may be worn on the uniform of a registrant.

B. A licensee shall not display red or blue emergency lights on any vehicle used on a security assignment.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 18: (February 1992).

Chapter 8. Licensee Suitability, Records, Investigations and Registrant Violations

§801. Licensee's Suitability and Business Relationships

A. The board may deny an application, suspend, revoke or restrict a licensee upon the vote of four concurring members when it finds that the licensee or business entity is unsuitable for the purpose of its license or endangers the health, safety or welfare of the citizens of this state.

B. In determining the suitability of an applicant or licensee or other persons or business entities, the board may consider the following:

1. general character, including honesty and integrity;

2. financial security and stability, competency, and business experience in the capacity of the relationship; and

3. refusal to provide records, information, equipment, or access to premises to any authorized representative of the board, or any law enforcement officer when such access is reasonably necessary to insure compliance with R.S. 37:3270 through 3298 and the rules herein.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 15:11 (January 1989), LR 15:846 (October 1989), LR 18: (February 1992).

§803. Employee Records Required to be Kept and Subject to Inspection

A. The licensee is required to keep on file the following documentation on each registrant in their employment up to three years from date of termination. Such documentation is subject to inspection as may reasonably be required by an authorized representative of the board during reasonable business hours:

1. current residence and phone number of all registrants;

2. copy of the application submitted to the board;

3. copy of training verification form submitted to the board and original training tests completed by any registrant trained by such company, and any other documented information on required training;

4. copy of registration card issued by the board; and

5. copy of termination notice.

B. An authorized representative of the board shall be defined as the executive secretary, investigator or staff member of the board. Board members are not authorized to inspect employee records of licensees without the voting approval of the majority of the board at a public board meeting.

C. Licensee shall make available to any authorized representative of the board for inspection such employee records and other information as the board may reasonably require to insure compliance with R.S. 37:3270 through 3298 and the rules herein.

D. The board shall notify the company in writing 15 days prior to the conducting of a routine inspection of employee records.

E. The board shall notify in writing three days prior to conducting an inspection of their employee records brought on by a complaint.

F. A company will have no more than 30 days to comply with the board's written findings as a result of an inspection, in addition to paying any assessed administrative fines.

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

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 18: (February 1992).

§805. Investigations

A. The board may investigate the actions of any licensee. The investigation shall be conducted for the purpose of determining whether a licensee is in compliance with R.S. 37:3270 through 3298 and the rules herein.

B. An investigation conducted by a duly-authorized representative of the board is not to be construed as an inspection of files as described in Chapter 7, §707 C. It is an investigation of alleged violations by a licensee or registrant as a result of a complaint, and is exempt from written and verbal notification.

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Board of Private Security Examiners, LR 18: (February 1992).

§807. Violations by Registrants

A. In addition to violations specified in R.S. 37:3270 et seq. and the other parts of these rules, the following shall be considered violations by a registrant:

1. performing security duties for any other person other than the licensee with whom he is registered;

2. failure to sign registration card;

3. failure to affix a photograph to registration card;

4. failure to timely surrender registration card when required to do so;

5. possession or use of any registration card which has been improperly altered;

6. defacing of a registration card; and

7. allowing improper use of a registration card.

AUTHORITY NOTE: Promulgated in accordance with

R.S. 37:3270 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Board of Private Security Examiners, LR 18: (February 1992).

Chapter 9. Administrative Penalties

§901. Administrative Penalties Pursuant to R.S. 37:3288

A. Any person who is determined by the board, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Administrative Procedure Act, to have committed an act that is a violation of R.S. 37:3270 et seq., or any rule herein is subject to an administrative penalty of not more than $500 per violation; and/or denial, suspension or revocation of a license or registration card; and/or imposition of probationary conditions or other restrictions including assessment of administrative costs incurred.

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 18: (February 1992).

§903. Administrative Penalties Pursuant to R.S. 37:3288(B)

A. Licensees and registrants who violate provisions of R.S. 37:3270 et seq. and the rules herein may be assessed administrative penalties by the executive secretary in lieu of, but not limited to, bringing licensee or registrant before the board at a hearing.

B. Assessed administrative fines may be appealed by submitting to the board a written request to appear before the board at the next scheduled board meeting.

C. In accordance with R.S. 37:3288(B), administrative penalty schedule is as follows:

1. licensee's failure to submit security officer application, fingerprint card, and/or necessary registration fees within prescribed time period - not to exceed $25;

2. licensee's failure to resubmit fingerprint card after two written requests by the board when a deadline date is given - not to exceed $25;

3. licensee's failure to notify the board in writing within prescribed time period of security officers in their employ who have been terminated - not to exceed $25;

4. licensee's or registrant's failure to submit information as requested by the board when a deadline date is given - not to exceed $25. If information is not submitted within 14 days after deadline date, administrative fine accumulates at a daily rate, not to exceed $500;

5. licensee's failure to submit company license renewal fee prior to expiration date - not to exceed $25/day, up to $500;

6. licensee's failure to submit renewal application and renewal fee for a registrant in their employ prior to expiration date - not to exceed $25;

7. licensee's failure to have registrant in their employ trained within prescribed time period - not to exceed $25;

8. licensee's failure to submit to the board a training verification form on a registrant in their employ within prescribed time period - not to exceed $25;

9. registrant's failure to carry on his person a temporary or permanent registration card while on duty - not to exceed $25;

10. Registrant carrying an unauthorized weapon while on duty - not less than $25 nor more than $100;

11. licensee's or registrant's submission of a check to the board that is returned from the bank deemed non-sufficient funds - $25;

12. fingerprint cards repeatedly rejected by the Department of Public Safety as non-classifiable due to smudges, not being fully rolled, etc. - not to exceed $25; and

13. falsification of any application submitted to the board - not to exceed $500.

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Security Examiners, LR 13:751 (December 1987), amended LR 18: (February 1992).

Cynthia Fonté-Breaux
Executive Secretary

RULE

Department of Public Safety and Corrections
Office of State Police

The Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section in compliance with and under authority of R.S. 49:950 et seq., and R.S. 33:4862.1 et seq., hereby adopts rules and regulations pertaining to the operation of Video Draw Poker devices and the regulation and licensing of manufacturers, distributors, owners/operators, service entities, and other establishments wishing to participate in the Video Draw Poker gaming industry in Louisiana as outlined below:

Chapter 24. Video Draw Poker
- 2401. POLICY
- 2403. DEFINITIONS
- 2405. LICENSES
  - A. Application
  - B. Requirements
  - C. Reinstatement Requirements
  - D. General Provisions
- 2407. GAMES
  - A. Video Draw Poker
  - B. Operations of Video Draw Poker Games
  - C. Unauthorized Wagers
  - D. Inspections
- 2409. REVENUES
  - A. License Fees
  - B. Franchise Payments
  - C. Net Facility Revenue
  - D. Parish/Municipal
  - E. Supplement Purses for Horsemen
  - F. Methods of Payment
  - G. Authority to Audit Records
- 2411. REGULATORY COMMUNICATIONS & RESPONSIBILITIES
  - A. Licensees of Licensed Establishments
  - B. Licensed Manufacturers
  - C. Licensed Distributors
  - D. Licensed Device Owner
  - E. Contracts

2413. DEVICES
- A. Device Specifications
- B. Enrolling Procedures
- C. Inspection of Devices
- D. Testing of Video Gaming Devices
- E. Device Seizures
- F. Maintenance
- G. Security
- H. Contraband Equipment/Unregulated Devices or Gray Area Devices

2415. GAMING ESTABLISHMENTS
- A. Facility License
- B. Operations of Facilities
- C. Security
- D. Prizes
- E. Device Locations
- F. Illicit Activities Prohibited

2417. ACTIVITIES AFFECTING GENERAL PUBLIC
- A. Minors
- B. Notification of Gaming Activities
- C. Solicitations
- D. Advertising

2419. FORMS AND REPORTING REQUIREMENTS
- A. Forms
- B. Applications
- C. Reporting Requirements

2421. CODE OF CONDUCT OF LICENSEES
- A. Required Cooperation with the Division
- B. Public Relations
- C. Prohibited Relations

2423. INVESTIGATIONS
- A. General
- B. Background Investigations
- C. Information
- D. Inspections
- E. Compliance
- F. Gaming Activity
- G. Criminal Activity

2425. MISCELLANEOUS
- A. Special Investigations and Inspections
- B. Written Reprimands and Required Meetings
- C. Amendments to Rules and Regulations

2427. HEARINGS, PROCEDURES AND PENALTIES
- A. General
- B. Procedure

Copies of these proposed rules and regulations may be obtained from the Office of State Register, 1051 Riverside Drive-North, Baton Rouge, LA 70804.

Colonel Paul Fontenot
Deputy Secretary

RULE

Department of Revenue and Taxation
Tax Commission

In accordance with provisions of the Administrative Procedure Act R.S. 49:950, et seq., notice is hereby given that the Tax Commission has amended a section of the Real/Personal Property rules and regulations as found in LAC 61:V.909, Appendix A, Table 909.(A).

Title 61
REVENUE AND TAXATION
Part V. Ad Valorem Taxation

Chapter 9. Oil and Gas Properties

§909. Tables - Oil and Gas

[Tables can be found in Appendix A.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by Louisiana Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 18: (February 1992).

APPENDIX A

§909. (A)

OIL, GAS AND ASSOCIATED WELLS

The Cost - New schedules below cover only that portion of the well subject to ad valorem taxation. Economic and/or functional obsolescence is a loss in value of personal property above and beyond physical deterioration. Upon a showing of evidence of such loss, substantiated by the taxpayer in writing, economic or functional obsolescence shall be given.

If economic and/or functional obsolescence is not given when warranted, an appreciated value greater than fair market value may result.

See explanations elsewhere in this section regarding the assessment of multiple completion wells.

PRODUCING DEPTHS	COST - NEW VALUE BY DEPTH PER FOOT		**15% OF COST-NEW BY DEPTH PER FOOT	
	Region 1*	Region 2*	Region 1*	Region 2*
0- 1,249 ft.	$ 3.00	$ 3.30	$ .45	$ .50
1,250- 2,499 ft.	4.74	5.17	.71	.78
2,500- 3,749 ft.	7.14	7.83	1.07	1.17
3,750- 4,999 ft.	9.07	9.80	1.36	1.47
5,000- 7,499 ft.	16.93	18.11	2.54	2.72
7,500- 9,999 ft.	20.08	21.51	3.01	3.23
10,000-12,499 ft.	25.84	25.84	3.88	3.88
12,500-14,999 ft.	38.04	38.04	5.71	5.71
15,000-17,499 ft.	57.91	57.91	8.69	8.69
17,500-19,999 ft.	83.57	83.57	12.54	12.54
20,000-Deeper ft.	127.38	127.38	19.11	19.11

*Refer to List of Parishes located in Region 1. All parishes not listed as located in Region 1 are considered to be located in Region 2.

**These 15% values must be multiplied by the percent good factors, based on the age of each well, to obtain the assessed value exclusive of additional obsolescence consideration.

PARISHES LOCATED IN REGION 1

Bienville	Franklin	Red River
Bossier	Grant	Richland
Caddo	Jackson	Sabine
Caldwell	LaSalle	Tensas
Catahoula	Lincoln	Union
Claiborne	Madison	Webster
Concordia	Morehouse	West Carroll
DeSoto	Natchitoches	Winn
East Carroll	Ouachita	

PROCEDURE FOR ARRIVING AT ASSESSED VALUE

1. Multiply the appropriate percent good factor based on age of the well as found on the serial number chart below.

2. Shut-in wells with future utility (Status Code 1) as listed on the year-end Office of Conservation Oil Well Potential Report (Form DM 1 R) or Gas Well Deliverability Test (Form DT 1) are to be allowed a deduction of 10 percent for obsolescence. Shut-in wells with no future utility (Status Code 2) are to be allowed a deduction of 75 percent for obsolescence.

3. Deduct any additional obsolescence as warranted to reflect fair market value (i.e. Well Status Codes 27, 41, 42, 43, 63, etc. in Conservation Department data files).

SERIAL NUMBER TO PERCENT GOOD CONVERSION CHART

YEAR	BEGINNING SERIAL NO.	ENDING SERIAL NO.	25 YEAR LIFE PERCENT GOOD
1991	212881	AND UP	98%
1990	211174	212880	95%
1989	209484	211173	93%
1988	207633	209483	90%
1987	205211	207632	87%
1986	202933	205210	84%
1985	197563	202932	81%
1984	189942	197562	78%
1983	184490	189941	75%
1982	179370	184489	71%
1981	173109	179369	68%
1980	166724	173108	64%
1979	162463	166723	60%
1978	158114	162462	56%
1977	154410	158113	52%
1976	150983	154409	48%
1975	147695	150982	44%
1974	144502	147694	39%
1973	141817	144501	34%
1972	138757	141816	30%
1971	135746	138756	26%
1970	131757	135745	23%
1969	127405	131756	21%
1968	AND LOWER	127404	20%
VAR.	900000	AND UP	20%

Malcolm B. Price
Chairman

RULE

Department of Social Services
Office of Community Services

The Department of Social Services, Office of Community Services, shall adopt the following rule in the Adoption Program.

This rule is mandated by Act 519 of the 1991 Session of the Louisiana Legislature which amends and re-enacts R.S. 40:91(D) and 92(B) to revise the State Voluntary Registry Act with respect to age limitations and time within which to match registrants. This was published as an emergency rule in the October 20, 1991 and the January 20, 1992 issues of the *Louisiana Register*. The rule published in the June 20, 1983, pages 415-416, issue of the *Louisiana Register* is hereby amended to reflect this change.

RULE

Effective September 6, 1991, adoptees and birth parents may register in the State Voluntary Register when the adoptee reaches 18 years of age. The registration will remain in effect indefinitely. The registration may be withdrawn by the adoptee or birth parent at any time by a written request.

Gloria Bryant-Banks
Secretary

RULE

Department of Social Services
Office of Community Services

The Department of Social Services, Office of Community Services has adopted the following rule in the Child Protection Program.

This rule is necessary to bring the Child Protection Investigation Program into conformity with the Louisiana Children's Code, Title VI, Child In Need of Care, Article 612, Investigation of Reports. This was published as an emergency rule in the December 20, 1991 issue of the *Louisiana Register*.

RULE

Effective January 1, 1992, the Office of Community Services will tape record all interviews of the child and his parents conducted in the course of a Child Protection Investigation, if requested by the parent or parents.

Gloria Bryant-Banks
Secretary

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

(**Editor's Note:** The following sections in rules, appearing on pages 81-82 of the *Louisiana Register*, January, 1992, are being republished to correct typographical errors.)

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life

Chapter 2. General Provision

§201. Commercial Fisherman's Sales Card; Dealer Receipt Form

The design and use are as follows.

A. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:303.7.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:81 (January 1992), repromulgated LR 18: (February 1992).

§203. Commercial Fisherman's Sales Report Form

The design and use are as follows.

A. - C. ...

D. The effective date of this regulation is July 1, 1992.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:345(B).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:82 (January 1992), repromulgated LR 18: (February 1992).

James H. Jenkins, Jr.
Chairman

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Wildlife and Fisheries Commission does hereby adopt a rule to mandate marking of crab traps.

RULE
Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 3. Saltwater Sport and Commercial Fishing
§345. Crab Trap Marking

Each crab trap shall be marked with a one-half-inch stainless steel self-locking tag attached to the center of the trap ceiling. Said tags shall be supplied by the fishermen and shall have the commercial fisherman's license number (not the commercial gear license) or the recreational crab trap gear license number printed thereon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332D.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18: (February 1992).

James H. Jenkins, Jr.
Chairman

RULE

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

The Louisiana Wildlife and Fisheries Commission does hereby adopt rules and regulations affecting the management of the spotted seatrout fishery in Louisiana.

Title 76
WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 3. Saltwater Sport and Commercial Fishery
§341. Spotted Seatrout Management Measures

A. There shall be a closed season for the commercial take from Louisiana waters, and a prohibition of the commercial possession of spotted seatrout, including but not limited to a prohibition of the possession of spotted seatrout on any vessel possessing or fishing any seine, gill net, trammel net, or hoop net, whether taken from within or without Louisiana waters, and the commercial sale, barter, or trade of spotted seatrout in Louisiana from 12:01 a.m. May 1 until midnight September 14 of every year.

B. There shall be a prohibition of the commercial take from Louisiana waters, and the commercial possession of spotted seatrout on the waters of the state, including but not limited to a prohibition of the possession of spotted seatrout during the closed season on any vessel possessing or fishing any seine, gill net, trammel net, or hoop net, whether taken from within or without Louisiana waters from sunset Friday through sunset Sunday for every weekend of the open commercial spotted seatrout season.

C. The annual commercial quota for spotted seatrout shall be one million pounds.

D. The commercial season for spotted seatrout shall be closed each year at 12:01 a.m. May 1, or when the quota has been reached, or when the staff of the Department of Wildlife and Fisheries predicts the 1,000,000 pound quota will be met, whichever comes first.

E. Nothing shall prohibit the possession, sale, barter or exchange by commercial fishermen off the water of fish legally taken during any open period, or commercial dealers and anyone other than a commercial fisherman licensed to sell, barter or exchange spotted seatrout from possessing, selling, bartering or trading spotted seatrout taken legally during any open period provided that those who are required to do so shall maintain appropriate records in accordance with R.S. 56:306.4.

This rule shall become effective on February 20, 1992.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a); 56:325.3; 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18: (February 1992).

James H. Jenkins, Jr.
Chairman

Notices of Intent

NOTICE OF INTENT

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

In accordance with the provisions of R.S. 49:950, et seq., the Administrative Procedure Act, and R.S. 3:2095, relative to the power of the Livestock Sanitary Board to deal with diseases of animals, notice is hereby given that the Live-

stock Sanitary Board proposes to amend and/or add to the regulations of the board:

Title 7
AGRICULTURE AND ANIMALS
Part XXI. Diseases of Animals
Chapter 117. Livestock Sanitary Board

* * *

Subchapter B. Cattle
§11731. Admission of Cattle into Louisiana

* * *

B. Brucellosis

* * *

4. All intact male and female cattle over 12 months of age moving into the state of Louisiana from Class B states must have a permit for entry prior to coming into Louisiana. These test eligible cattle must be quarantined and retested 45 to 120 days after movement into Louisiana. The following are exempt from this requirement:

a. individually identified, officially calfhood vaccinated females under 20 months of age for dairy breeds and under 24 months of age for beef breeds which are not preparturient (springers) or post-parturient, and the herd of origin is not known to be infected with brucellosis;

b. individually identified cattle originating from a certified brucellosis-free herd or certified brucellosis-free area, and moving directly to a Louisiana farm. The certified herd number must be recorded on the health certificate;

c. cattle accompanied by a waybill to a recognized slaughter establishment for immediate slaughter only or to an approved livestock auction market for sale for immediate slaughter, for sale to a quarantined feedlot;

d. steers and spayed heifers;

e. test-eligible cattle moving directly to a Louisiana auction market must have a permit for entry.

Interested persons may comment on the proposed policy changes and/or additions, in writing, until 4:30 p.m., March 10, 1992, at the following address: Maxwell Lea, Jr., D.V.M., State Veterinarian, Department of Agriculture and Forestry, Livestock Sanitary Board, Box 1951, Baton Rouge, LA 70821

Maxwell Lea, Jr., D.V.M.
State Veterinarian

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Admission of Cattle Into Louisiana
(LAC 7:XXI.11731)

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

There would be no costs to state or local governmental units to implement the proposed amendment.

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

There would be no effect on revenue collections of state or local governmental units by this proposed action.

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

There would be no economic benefits or costs associated with this rule to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is estimated that this action would have no effect on competition and employment.

Richard Allen
Assistant Commissioner
Management and Finance

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Revisions to Standards 1.090.11 and 1.105.37 of Bulletin 741

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 revisions to Standards 1.090.11 and 1.105.37 of Bulletin 741, Louisiana Handbook for School Administrators relating to prior board approval of local electives as stated below:

ADDING ELECTIVES/EXPLORATORIES TO THE PROGRAM OF STUDIES

1.090.11 A school system choosing to add an elective/exploratory course to its program of studies shall apply to the director of the Bureau of Elementary Education, State Department of Education (SDE), at least 60 days prior to the anticipated date of implementation. The state superintendent of education shall follow the guidelines for elective approval and submit a recommendation to the BESE for consideration.

The application for an elective/exploratory course shall be by the superintendent and shall contain the following information:

1. detailed outline of course content;
2. time requirements (minutes per day; days per year or semester);
3. detailed course objectives and methods by which they shall be measured;
4. qualifications of the instructor;
5. date the course is to begin;
6. approximate number of students;
7. criteria for enrollment.

If the course is to be offered for the succeeding school year, an end-of-the-year evaluation shall be sent on provided forms to the Bureau of Elementary Education for determining its continuation.

After an elective/exploratory course has been in effect for three successive school years and if the system wants the course to be a permanent part of its curriculum, the school system's superintendent shall apply by letter to the director of the Bureau of Elementary Education for permission to include it. The superintendent of education shall review the request with course evaluations and submit the request along with a recommendation to BESE for consideration.

During the year preceding the system's accreditation on-site review, an end-of-the-year evaluation shall be completed for all specially designed elective courses.

The department will review each course evaluation as a part of the on-site review and make a determination concerning the continuation of each course.

1.105.37 A school system choosing to add an elective course to its program of studies shall apply to the director of the Bureau of Secondary Education, state Department of Education, at least 60 days prior to the anticipated date of implementation. The state superintendent of education shall follow the guidelines for elective approval and submit a recommendation to the BESE for consideration.

The director of the Bureau of Secondary Education shall determine, from the information submitted whether or not the course is approved and so notify the applicant.

The application for an elective course shall be signed by the superintendent and shall contain the following information:

1. detailed outline of course content;
2. units of credit to be granted;
3. detailed course objectives and the methods by which they shall be measured;
4. qualifications of the instructor;
5. date the course is to begin;
6. approximate number of students; and
7. criteria for enrollment.

Elective courses designed specifically for special education students shall also be approved by the Office of Special Education Services.

If the course is to be offered for the succeeding school year, an end-of-the-year evaluation shall be sent on forms provided to the Bureau of Secondary Education for determining its continuation.

After an elective course has been in effect for three successive school years and the system wants the course to be a permanent part of its curriculum, the school superintendent shall apply by letter to the director of the Bureau of Secondary Education for permission to include it. The state superintendent of education shall review the request along with course evaluations and submit the request along with a recommendation to the BESE for consideration.

Interested persons may comment on the proposed policy changes/additions in writing, until 4:30 p.m., April 9, 1992 at the following address: Eileen Bickham, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Adding Electives/Exploratories to the Program of Studies - Motion 8
BESE Meeting 11/19/91

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

There is an implementation cost to state or local governmental units. The cost to reprint and distribute the appropriate page(s) to Bulletin 741 will be approximately $100.

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

There is 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 will be no cost and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule will have no effect on competition and employment.

John Guilbeau
Acting Deputy Superintendent
for Management and Finance

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Environmental Quality
Office of Air Quality and Radiation Protection

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., particularly R.S. 30:2054, 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 adopt the Air Quality Regulations, LAC 33:III.4865, (AQ45).

This proposed regulation will establish the identical standards as those established by EPA for controlling particulate emissions from nonmetallic mineral processing plants. These regulations also include test methods, reporting, recordkeeping and monitoring requirements. See *Federal Register* dated August 1, 1985, 51 FR 31337, 148.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 31. Standards of Performance for New Stationary Sources

* * *

§4865. Standards of Performance for Nonmetallic Mineral Processing Plants (Subpart OOO)

A. Applicability and Designation of Affected Facility

1. Except as provided in Subsections A.2, 3, and 4 of this Section, the provisions of this Section are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station.

2. An affected facility that is subject to the provisions of LAC 33:III.3190 through 3194, or 3250 through 3253, or that follows in the plant process any facility subject to the provisions of LAC 33:III.3190 through 3194 or LAC 33:III.3250 through 3253, is not subject to the provisions of this Section.

3. Facilities at the following plants are not subject to the provisions of this Section:

a. fixed sand and gravel plants and crushed stone

plants with capacities, as defined in Subsection B of this Section, of 23 megagrams per hour (25 tons per hour) or less;

b. portable sand and gravel plants and crushed stone plants with capacities, as defined in Subsection B of this Section, of 136 megagrams per hour (150 tons per hour) or less; and

c. common clay plants and pumice plants with capacities, as defined in Subsection B of this Section, of nine megagrams per hour (10 tons per hour) or less.

4. a. When an existing facility is replaced by a piece of equipment of equal or smaller size, as defined in Subsection B of this Section, having the same function as the existing facility, the new facility is exempt from the provisions of Subsections C, E, and F of this Section except as provided for in Subsection A.4.c of this Section.

b. An owner or operator seeking to comply with this Paragraph shall comply with the reporting requirements of Subsection G.1 and 2 of this Section.

c. An owner or operator replacing all existing facilities in a production line with new facilities does not qualify for the exemption described in Subsection A.4.a of this Section and must comply with the provisions of Subsections C, E, and F of this Section.

5. An affected facility under Subsection A.1 of this Section that commences construction, reconstruction, or modification after August 31, 1983 is subject to the requirements of this Section.

B. Definitions.

All terms not defined in LAC 33:III.3013 or herein shall have the meaning given them in LAC 33:III.111 of these regulations.

Bagging Operation—the mechanical process by which bags are filled with nonmetallic minerals.

Belt Conveyor—a conveying device that transports material from one location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end.

Bucket Elevator—a conveying device of nonmetallic minerals consisting of a head and foot assembly which supports and drives an endless single or double strand chain or belt to which buckets are attached.

Building—any frame structure with a roof.

Capacity—the cumulative rated capacity of all initial crushers that are part of the plant.

Capture System—the equipment (including but not limited to enclosures, hoods, ducts, fans, and dampers) used to capture and transport particulate matter generated by one or more process operations to a control device.

Control Device—the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one or more process operations at a nonmetallic mineral processing plant.

Conveying System—a device for transporting materials from one piece of equipment or location to another location within a plant. Conveying systems include but are not limited to the following: feeders, belt conveyors, bucket elevators and pneumatic systems.

Crusher—a machine used to crush any nonmetallic minerals, and includes, but is not limited to, the following types: jaw, gyratory, cone, roll, rod mill, hammermill, and impactor.

Enclosed Truck or Railcar Loading Station—that portion of a nonmetallic mineral processing plant where nonmetallic minerals are loaded by an enclosed conveying system into enclosed trucks or railcars.

Fixed Plant—any nonmetallic mineral processing plant at which the processing equipment specified in Subsection A.1 of this Section is attached by a cable, chain, turnbuckle, bolt or other means (except electrical connections) to any anchor, slab, or structure including bedrock.

Fugitive Emission—particulate matter that is not collected by a capture system and is released to the atmosphere at the point of generation or thereafter.

Grinding Mill—a machine used for the wet or dry fine crushing of any nonmetallic mineral. Grinding mills include, but are not limited to, the following types: hammer, roller, rod, pebble and ball, and fluid energy. The grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used.

Initial Crusher—any crusher into which nonmetallic minerals can be fed without prior crushing in the plant.

Nonmetallic Mineral—any of the following minerals or any mixture of which the majority is any of the following minerals: crushed and broken stone, including limestone, dolomite, granite, traprock, sandstone, quartz, quartzite, marl, marble, slate, shale, oil shale, and shell; sand and gravel; clay including kaolin, fireclay, bentonite, fuller's earth, ball clay, and common clay; rock salt; gypsum; sodium compounds, including sodium carbonate, sodium chloride, and sodium sulfate; pumice; gilsonite; talc and pyrophyllite; boron, including borax, kernite, and colemanite; barite; fluorospar; feldspar; diatomite; perlite; vermiculite; mica; or kyanite, including andalusite, sillimanite, topaz, and dumortierite.

Nonmetallic Mineral Processing Plant—any combination of equipment that is used to crush or grind any nonmetallic mineral wherever located, including lime plants, power plants, steel mills, asphalt concrete plants, portland cement plants, or any other facility processing nonmetallic minerals except as provided in Subsections A.2 and 3 of this Section.

Portable Plant—any nonmetallic mineral processing plant that is mounted on any chassis or skids and may be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit.

Production Line—all affected facilities (crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, and enclosed truck and railcar loading stations) which are directly connected or are connected together by a conveying system.

Screening Operation—a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces (screens).

Size—the rated capacity in tons per hour of a crusher, grinding mill, bucket elevator, bagging operation, or enclosed truck or railcar loading station; the total surface area of the top screen of a screening operation; the width of a conveyor belt; and the rated capacity in tons of a storage bin.

Stack Emission—the particulate matter that is released to the atmosphere from a capture system.

Storage Bin—a facility for storage (including surge

bins) or nonmetallic minerals prior to further processing or loading.

Transfer Point—a point in a conveying operation where the nonmetallic mineral is transferred to or from a belt conveyor except where the nonmetallic mineral is being transferred to a stockpile.

Truck Dumping—the unloading of nonmetallic minerals from movable vehicles designed to transport nonmetallic minerals from one location to another. Movable vehicles include but are not limited to: trucks, front end loaders, skip hoists, and railcars.

Vent—an opening through which there is mechanically induced air flow for the purpose of exhausting from a building air carrying particulate matter emissions from one or more affected facilities.

C. Standard for Particulate Matter

1. On and after the date on which the performance test required to be conducted by LAC 33:III.3115 is completed, no owner or operator subject to the provisions of this Section shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any stack emissions which:

a. contain particulate matter in excess of 0.05 g/dscm; or

b. exhibit greater than seven percent opacity, unless the stack emissions are discharged from an affected facility using a wet scrubbing control device. Facilities using a wet scrubber must comply with the reporting provisions of Subsection G.3, 4, and 5 of this Section.

2. On and after the 60th day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up, no owner or operator subject to the provisions of this Section shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any fugitive emissions which exhibit greater than 10 percent opacity, except as provided in Subsection C.3, 4, and 5 of this Section.

3. On and after the 60th day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up, no owner or operator shall cause to be discharged into the atmosphere from any crusher, at which a capture system is not used, fugitive emissions which exhibit greater than 15 percent opacity.

4. Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher is exempt from the requirements of this Section.

5. If any transfer point on a conveyor belt or any other affected facility is enclosed in a building, then each enclosed affected facility must comply with the emission limits in Subsection C.1, 2, and 3 of this Section, or the building enclosing the affected facility or facilities must comply with the following emission limits:

a. No owner or operator shall cause to be discharged into the atmosphere from any building enclosing any transfer point on a conveyor belt or any other affected facility any visible fugitive emissions except emissions from a vent as defined in Subsection B of this Section.

b. No owner or operator shall cause to be discharged into the atmosphere from any vent of any building enclosing any transfer point on a conveyor belt or any other affected facility emissions which exceed the stack emissions limits in Subsection C.1 of this Section.

D. Reconstruction

1. The cost of replacement of ore-contact surfaces on processing equipment shall not be considered in calculating either the "fixed capital cost of the new components" or the "fixed capital cost that would be required to construct a comparable new facility" under LAC 33:III.3129. Ore-contact surfaces are crushing surfaces; screen meshes, bars, and plates; conveyor belts; and elevator buckets.

2. Under LAC 33.III.3129, the "fixed capital cost of the new components" includes the fixed capital cost of all depreciable components (except components specified in Subsection D.1 of this Section) which are or will be replaced pursuant to all continuous programs of component replacement commenced within any two-year period following August 31, 1983.

E. Monitoring of Operations. The owner or operator of any affected facility subject to the provisions of this Section which uses a wet scrubber to control emissions shall install, calibrate, maintain and operate the following monitoring devices:

1. A device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within $\pm$250 pascals ($\pm$1 inch water) gauge pressure and must be calibrated on an annual basis in accordance with manufacturer's instructions.

2. A device for the continuous measurement of the scrubbing liquid flow rate to the wet scrubber. The monitoring device must be certified by the manufacturer to be accurate within $\pm$5 percent of design scrubbing liquid flow rate and must be calibrated on an annual basis in accordance with manufacturer's instructions.

F. Test Methods and Procedures

1. In conducting the performance tests required in LAC 33.III.3115, the owner or operator shall use as reference methods and procedures the test methods in the Division's Source Test Manual or other methods and procedures as specified in this Section, except as provided in LAC 33:III.3115.B. Acceptable alternative methods and procedures are given in Subsection F.5 of this Section.

2. The owner or operator shall determine compliance with the particulate matter standards in LAC 33:III.3515.C.1 as follows:

a. Method 5 (LAC 33:III.6015) or Method 17 (LAC 33:III.6069) shall be used to determine the particulate matter concentration. The sample volume shall be at least 1.70 dscm (60 dscf). For Method 5 (LAC 33:III.6015), if the gas stream being sampled is at ambient temperature, the sampling probe and filter may be operated without heaters. If the gas stream is above ambient temperature, the sampling probe and filter may be operated at a temperature high enough, but no higher than 121°C (250°F), to prevent water condensation on the filter.

b. Method 9 (LAC 33:III.6047) and the procedures in LAC 33:III.3121 shall be used to determine opacity.

3. In determining compliance with the particulate matter standards in Subsection C.2 and 3 of this Section, the owner or operator shall use Method 9 (LAC 33:III.6047) and the procedures in LAC 33:III.3121, with the following additions:

a. The minimum distance between the observer and the emission source shall be 4.57 meters (15 feet).

b. The observer shall, when possible, select a position that minimizes interference from other fugitive emission sources (e.g., road dust). The required observer position relative to the sun (LAC 33:III.6047.B.1) must be followed.

c. For affected facilities using wet dust suppression for particulate matter control, a visible mist is sometimes generated by the spray. The water mist must not be confused with particulate matter emissions and is not to be considered a visible emission. When a water mist of this nature is present, the observation of emissions is to be made at a point in the plume where the mist is no longer visible.

4. In determining compliance with Subsection C.5 of this Section, the owner or operator shall use Method 22 (LAC 33:III.6079) to determine fugitive emissions. The performance test shall be conducted while all affected facilities inside the building are operating. The performance test for each building shall be at least 75 minutes in duration, with each side of the building and the roof being observed for at least 15 minutes.

5. The owner or operator may use the following as alternatives to the reference methods and procedures specified in this Section:

a. For the method and procedure of Subsection F.3 of this Section, if emissions from two or more facilities continuously interfere so that the opacity of fugitive emissions from an individual affected facility cannot be read, either of the following procedures may be used:

i. For the combined emission stream use the highest fugitive opacity standard applicable to any of the individual affected facilities contributing to the emissions stream.

ii. Separate the emissions so that the opacity of emissions from each affected facility can be read.

6. To comply with Subsection G.4 of this Section, the owner or operator shall record the measurements as required by Subsection G.3 of this Section using the monitoring devices in Subsections E.1 and 2 of this Section during each particulate matter run and shall determine the averages.

G. Reporting and Recordkeeping

1. Each owner or operator seeking to comply with Subsection A.4 of this Section shall submit to the administrative authority the following information about the existing facility being replaced and the replacement piece of equipment.

a. For a crusher, grinding mill, bucket elevator, bagging operation, or enclosed truck or railcar loading station:

i. the rated capacity in tons per hour of the existing facility being replaced, and

ii. the rated capacity in tons per hour of the replacement equipment.

b. For a screening operation:

i. the total surface area of the top screen of the existing screening operation being replaced; and

ii. the total surface area of the top screen of the replacement screening operation.

c. For a conveyor belt:

i. the width of the existing belt being replaced; and

ii. the width of the replacement conveyor belt.

d. For a storage bin:

i. the rated capacity in tons of the existing storage bin being replaced; and

ii. the rated capacity in tons of replacement storage bins.

2. Each owner or operator seeking to comply with Subsection A.4 of this Section shall submit the following data to the administrative authority, Department of Environmental Quality, Office of Air Quality and Radiation Protection, Box 82135, Baton Rouge, LA 70884-2135.

a. The information described in Subsection G.1 of this Section.

b. A description of the control device used to reduce particulate matter emissions from the existing facility and a list of all other pieces of equipment controlled by the same control device; and

C. The estimated age of the existing facility.

3. During the initial performance test of a wet scrubber, and daily thereafter, the owner or operator shall record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate.

4. After the initial performance test of a wet scrubber, the owner or operator shall submit semiannual reports to the administrative authority of occurrences when the measurements of the scrubber pressure loss (or gain) and liquid flow rate differ by more than ± 30 percent from the average determined during the most recent performance test.

5. The reports required under Subsection G.4 of this Section shall be postmarked within 30 days following the end of the second and fourth calendar quarters.

6. The owner or operator of any affected facility shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in Subsection C of this Section, including reports of opacity observations made using Method 9 (LAC 33:III.6049) to demonstrate compliance with Subsections C.2 and 3 of this Section and reports of observations using Method 22 (LAC 33:III.6079) to demonstrate compliance with Subsection C.5 of this Section.

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 18:

These proposed regulations are to become effective on May 20, 1992 or as soon thereafter as practical upon publication in the *Louisiana Register*.

A public hearing will be held on March 26, 1992 at 1:30 p.m. in the Maynard Ketcham Building, Room 341 (Recital Room), 7290 Bluebonnet Boulevard, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than March 27, 1992 at 4:30 p.m., to David Hughes, Enforcement and Regulatory Compliance Division, Post Office Box 82282, Baton Rouge, LA 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810. Commentors should reference this proposed regulation by the Log AQ45.

James B. Thompson, III
Assistant Secretary

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Standards of Performance for Nonmetallic Mineral Processing Plants AQ45

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

There are no expected costs, or savings, to state or local governments expected from the implementation of the proposed rule.

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

There is no expected effect on revenue collections of state or local governmental units from the implementation of the proposed rule.

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

There is no expected incremental cost or economic benefits to directly affected persons or governmental groups from the implementation of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no expected effect on competition or employment from the implementation of the proposed rule.

Gus Von Bodungen, P.E.
Assistant Secretary

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Environmental Quality
Office of Air Quality and Radiation Protection

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., particularly R.S. 30:2054, 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 Air Quality Regulations, LAC 33:III.3805, (Log #AQ46).

This proposed regulation will establish the identical standards as those established by EPA for controlling VOC emissions from rubber tire manufacturers. These regulations also include test methods, reporting, recordkeeping, and monitoring requirements. See *Federal Register* dated September 15, 1987, 52 FR 34874, #178.

These proposed regulations are to become effective on May 20, 1992, or as soon thereafter as practical upon publication in the *Louisiana Register.*

A public hearing will be held on March 26, 1992 at 1:30 p.m. in the Maynard Ketcham Building, Room 341 (Recital Room), 7290 Bluebonnet Boulevard, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendments.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than March 27, 1992 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. Commentors should reference this proposed regulation by the Log #AQ46. This proposed regulation is available for inspection at the following locations from 8:00 a.m. until 4:30 p.m.

Office of State Register, 1051 Riverside, Baton Rouge, LA 70804;

Department of Environmental Quality, 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810;

Department of Environmental Quality, 804 31st Street, Monroe, LA 71203;

Department of Environmental Quality, State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101;

Department of Environmental Quality, 1150 Ryan Street, Lake Charles, LA 70601;

Department of Environmental Quality, 2945 North I-10 Service Road West, Metairie, LA 70002;

Department of Environmental Quality, 100 Eppler Road, Lafayette, LA 70505.

James B. Thompson, III
Assistant Secretary

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Standards of Performance for Rubber Tire Manufacturing Industry (Subpart BBB) AQ 46
(LAC 33:III.3805)

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

There are no expected costs, or savings, to state or local governments expected from the implementation of the proposed rule.

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

There is no expected effect on revenue collections of state or local governmental units from the implementation of the proposed rule.

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

There is no expected incremental or economic benefits to directly affected persons or governmental groups from the implementation of the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no expected effect on competition or employment from the implementation of the proposed rule.

Gus Von Bodungen, P.E.
Assistant Secretary

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals
Board of Medical Examiners

Notice is hereby given, in accordance with R.S. 49:953, that the Board of Medical Examiners (Board), pursu-

ant to the authority vested in the board by R.S. 37:1270(B)(6) and 37:1285(B), and the provisions of the Administrative Procedure Act, intends to adopt rules governing physician prescription, dispensation, administration or other use of medications for weight reduction in the medical treatment of obesity, LAC 46:XLV, Subpart 3, §6901-6909.

Title 46
Professional and Occupational Standards
Part XLV. Medical Professions
Subpart 3. Practice
Chapter 69. Prescription, Dispensation and Administration of Medications
Subchapter A. Medications Used in the Treatment of Obesity

§6901. Scope of Subchapter

The rules of this Subchapter govern physician prescription, dispensation, administration or other use of medications for weight control or weight reduction in the medical treatment of obesity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(a)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6903. Definitions

As used in this Subchapter, the following terms shall have the meanings specified:

Anorectic means a drug, medication or substance used or intended for use as an appetite suppressant.

Schedule II Controlled Substance means any substance so classified under and pursuant to regulations of the Drug Enforcement Administration (DEA), U.S. Department of Justice, 21 C.F.R. §1308.12, or any substance which may hereafter be so classified by amendment or supplementation of such regulation.

Schedule III Anorectic means and includes benzphetamine, phendimetrazine and any other substance now or hereafter classified as a Schedule III controlled substance under and pursuant to Federal DEA regulations, 21 C.F.R. §1308.13, and which is indicated for use in the treatment of exogenous obesity by express approval of the U.S. Food and Drug Administration (FDA).

Schedule IV Anorectic means and includes fenfluramine, phentermine, diethylpropion, mazindol and any other substance now or hereafter classified as a Schedule IV controlled substance under and pursuant to Federal DEA regulations, 21 C.F.R. §1308.14, and which is indicated for use in the treatment of exogenous obesity by express approval of the FDA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6905. Prohibitions

A. Absolute Prohibitions. A physician shall not prescribe, dispense, administer, supply, sell, give or otherwise use to or for any person for the purpose of weight control or weight reduction in the treatment of obesity any amphetamine, dextroamphetamine, methamphetamine or phenmetrazine drug or compound; any Schedule II Controlled Substance; human chorionic gonadotropin (HCG); thyroid hormones; diuretic medications; or any drug, medication, compound, or substance which is not indicated for use in the treatment of exogenous obesity by express approval of the U.S. Food and Drug Administration (FDA).

B. Schedule III-IV Anorectics. A physician shall not prescribe, dispense or administer Schedule III or Schedule IV anorectics for the purpose of weight reduction or control in the treatment of obesity other than in strict conformity with each of the conditions and limitations prescribed by §6907 of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B),

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6907. Use of Schedule III-IV Anorectics; Conditions, Limitations

A. General Conditions. A physician shall not prescribe, dispense, or administer a Schedule III or Schedule IV anorectic for the purpose of weight reduction or control in the treatment of obesity except as a short-term adjunct to a therapeutic regimen of weight reduction based on prescribed sound nutrition, caloric restriction, exercise, and behavior modification and otherwise in accordance with the FDA-approved labelling of the medication. Schedule III-IV anorectics may be prescribed, dispensed, or administered only to an adult patient who is obese under recognized generally accepted criteria for determining obesity, whose obesity is exogenous and not primarily metabolic, who is not pregnant, who does not suffer from or have any disease or condition constituting a recognized contraindication for use of the substance, and who otherwise satisfies the conditions requisite to treatment with anorectics as prescribed by this Section.

B. Requisite Prior Conditions. Before initiating treatment utilizing a Schedule III or IV anorectic with respect to any patient, a physician shall:

1. obtain a thorough prior history, including the patient's weight loss/gain history and prior efforts at weight reduction;

2. perform a thorough and complete physical examination;

3. determine that the patient is a proper candidate for weight reduction treatment and that the patient's obesity is not primarily metabolic;

4. rule out the presence of conditions recognized as contraindicating the use of anorectic medications, including, without limitation, pregnancy, hypertension, and hypersensitivity or idiosyncrasy to anorectics;

5. determine whether the patient has a history of or any tendency or propensity toward abuse of drugs, including alcohol;

6. determine that the patient has made a substantial good-faith effort at weight reduction under a *bonafide* program not utilizing anorectics;

7. take reasonable measures to ensure that the patient has not previously, in the course of treatment by one or more other practitioners, or otherwise, obtained and used anorectics in excess of the quantitative and durational limitations on the use of anorectics prescribed by Subsection E of the Section; and

8. provide the patient with a carefully prescribed diet, together with counselling on exercise and, as appropriate, other supportive or behavioral therapy.

C. Initiation of Anorectic Use. Upon completion and satisfaction of the conditions prescribed by Subsections A and B of this Section and upon the physician's judgment that the prescription, dispensation or administration of an anorec-

tic medication is medically warranted, the physician shall initiate anorectic treatment with the lowest dosage expected to be effective, as indicated by the manufacturer's FDA-approved dosage recommendation, employing a Schedule IV anorectic in preference to a Schedule III anorectic and refraining from use of Schedule III anorectics until and unless the anorectic initially used proves ineffective.

D. Continued Use of Anorectics. During the continued use of anorectics as permitted in this Section, and subject to the limitations prescribed in Subsection E hereof, the physician shall monitor the patient's progress closely and frequently, shall re-examine the patient not less frequently than monthly during such continued use and shall continue use of anorectics only if, upon each such re-examination, the patient demonstrates continued clinically significant weight loss since the prior examination.

E. Limitations on Use. A physician shall not prescribe or dispense Schedule III or IV anorectics to any patient:

1. in dosage greater than the maximum dosage indicated by the anorectic manufacturer's FDA-approved dosage recommendation;

2. in number or dosage units greater than an amount sufficient for use of the anorectic for a period of 30 days; or

3. for an aggregate period in excess of 12 weeks during any 24-month period.

F. Termination of Anorectic Use. Without regard to the permissible limitations otherwise prescribed by Subsection E hereof, a physician shall refuse to initiate or re-initiate or shall terminate the use of anorectics with respect to a patient on any date that the physician determines, becomes aware, knows or should know that;

1. the patient is not a proper candidate for the use of anorectics under the conditions and limitations prescribed by this Section;

2. the patient has failed to demonstrate clinically significant weight loss since anorectics were last prescribed, dispensed or administered to the patient by the physician;

3. the patient has developed tolerance to the appetite suppressant effect of the anorectic or has experienced euphoria followed by irritability or depression;

4. the patient has engaged in excessive use, misuse or abuse of the anorectic or has otherwise consumed or disposed of the anorectics or any other controlled substance other than in strict compliance with the directions and indications for use given by the physician; or

5. the patient did not demonstrate clinically significant weight loss during a prior term of use of anorectics within the limitations of §6907(E)(3) hereof.

G. Treatment Records. Satisfaction of each of the conditions and requirements prescribed by this Section, all material elements of the patient's history, all significant findings from physical examination and diagnostic testing, and all medication and other treatment, including diet, prescribed by the physician, shall be accurately and completely recorded, documented and dated, in writing, by the physician in the patient's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6909. Effect of Violation

Any violation of or failure of compliance with the provisions of this Subchapter §6901-6909, shall be deemed a violation of R.S. 37:1285(A)(6) and (29), providing cause for the board to suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license or permit held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6) and 1285(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

Interested persons may submit data, views, arguments, information or comments on the proposed rule amendments, in writing, to Delmar Rorison, Executive Director, Board of Medical Examiners, Suite 100, 830 Union St., New Orleans, LA, 70112-1499. Written comments must be submitted to and received by the board within 60 days 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: Medications Used in the Treatment of Obesity

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

It is not anticipated that the proposed rules 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 rules 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)

It is not anticipated that implementation of the proposed rules will have a material effect on costs, paperwork or workload of physicians who may treat obesity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rules 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 Medical Examiners

Notice is hereby given, in accordance with the Administrative Procedure Act R.S. 49:950 et seq., the Board of

Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:1746-47 and R.S. 37:1270(B)(6), intends to adopt rules prescribing practice and reporting requirements for physicians, podiatrists, physician's assistants, respiratory therapists and other board-licensed or certified practitioners to protect the public from the risk of the transmission of hepatitis B virus (HBV) and human immunodeficiency virus (HIV), LAC 46:XLV, Subpart 3, Chapter 67, §6701-6713.

Title 46
PROFESSIONAL AND OCCUPATIONAL STANDARDS
Part XLV. Medical Professions
Subpart 3. Practice

Chapter 67. Preventing Transmission of Hepatitis B Virus (HBV) and Human Immunodeficiency Virus (HIV) to Patients During Exposure-Prone Invasive Procedures

§6701. Scope of Chapter

As authorized and mandated by R.S. 37:1747, the rules of this Chapter prescribe practice and reporting requirements for physicians, podiatrists, physician's assistants, respiratory therapists and other board-licensed or certified practitioners to protect the public from the risk of the transmission of hepatitis B virus (HVB) and human immunodeficiency virus (HIV) to patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6703. Definitions

The terms used in this Chapter shall have the following meanings:

Board-Louisiana State Board of Medical Examiners.

Body fluids-amniotic, pericardial, peritoneal, pleural, synovial and cerebrospinal fluids, semen, vaginal secretions and other body fluids, secretions and excretions containing visible blood.

Exposure-Prone Procedure-an invasive procedure in which there is an increased risk of percutaneous injury to the practitioner by virtue of digital palpation of a needle tip or other sharp instrument in a body cavity or the simultaneous presence of the practitioner's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site, or any other invasive procedure in which there is a significant risk of contact between the blood or body fluids of the practitioner and the blood or body fluids of the patient.

Function ancillary to an invasive procedure-the preparation, processing or handling of blood, fluids, tissues, or instruments which may be introduced into or come into contact with any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane or percutaneous wound of the human body in connection with performance of an invasive procedure.

HBV-the hepatitis B virus.

HBeAg seropositive-with respect to a practitioner, that a test of the practitioner's blood under the criteria of the Federal Centers for Disease Control or of the Association of State and Territorial Public Health Laboratory Directors has confirmed the presence of hepatitis B e antigens and that no subsequent test has confirmed that hepatitis B e antigens are no longer present.

HIV-the human immunodeficiency virus, whether HIV-1 or HIV-2.

HIV seropositive-with respect to a practitioner, that a test under the criteria of the Federal Centers for Disease Control or of the Association of State and Territorial Public Health Laboratory Directors has confirmed the presence of HIV antibodies.

Invasive procedure-any surgical or other diagnostic or therapeutic procedure involving manual or instrumental contact with or entry into any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane or percutaneous wound of the human body.

Practitioner-a physician, podiatrist, physician's assistant, respiratory therapist or other health care provider licensed or certified by the board and authorized by applicable laws and regulations to perform or participate in invasive procedures or functions ancillary to invasive procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6705. Use of Infection Control Precautions

A. General Requirements. A practitioner who performs or participates in an invasive procedure or performs a function ancillary to an invasive procedure shall, in the performance of or participation in any such procedure or function, be familiar with, observe and rigorously adhere to both general infection control practices and universal blood and body-fluid precautions as then recommended by the Federal Centers for Disease Control to minimize the risk of HBV or HIV from a practitioner to a patient, from a patient to a practitioner, or from a patient to a patient.

B. Universal Blood and Body-Fluid Precautions. For purposes of this Section, adherence to universal blood and body-fluid precautions requires observance of the following minimum standards.

1. Protective Barriers. A practitioner shall routinely use appropriate barrier precautions to prevent skin and mucous-membrane contact with blood and other body fluids of all patients. Gloves and surgical masks shall be worn and shall be changed after contact with each patient. Protective eyewear or face shields and gowns or aprons made of materials that provide an effective barrier shall be worn during procedures that commonly result in the generation of droplets, splashing of blood or body fluids, or the generation of bone chips. A practitioner who performs, participates, or assists in a vaginal or caesarean delivery shall wear gloves and gowns when handling the placenta or the infant until blood and amniotic fluid have been removed from the infant's skin and shall wear gloves during post-delivery care of the umbilical cord. If, during any invasive procedure, a glove is torn or punctured, the glove should be removed and a new glove used as promptly as patient safety permits.

2. Hand Washing. Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands shall be washed immediately after gloves are removed.

3. Percutaneous Injury Precautions. A practitioner shall take appropriate precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures; when cleaning used instruments; during disposal of used needles; and when handling sharp instruments after procedures. If a needlestick injury occurs, the needle or instrument involved in the incident should be re-

moved from the sterile field. To prevent needlestick injuries, needles should not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades, and other sharp items should be placed for disposal in puncture-resistant containers located as close as practical to the use area. Large-bore reusable needles should be placed in puncture-resistant containers for transport to the reprocessing area.

4. Resuscitation Devices. To minimize the need for emergency mouth-to-mouth resuscitation, a practitioner shall ensure that mouthpieces, resuscitation bags, or other ventilation devices are available for use in areas in which the need for resuscitation is predictable.

5. Sterilization and Disinfection. Instruments or devices that enter sterile tissue or the vascular system of any patient or through which blood flows should be sterilized before reuse. Devices or items that contact intact mucous membranes should be sterilized or receive high-level disinfection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6707. Prohibitions and Restrictions

Except as may be permitted pursuant to §6709 of this Chapter, a practitioner who is HBeAg seropositive or HIV seropositive, or who otherwise knows or should know that he or she carries and is capable of transmitting HBV or HIV, shall not thereafter perform or participate directly in an exposure-prone procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6709. Exception; Informed Consent of Patient

A. Conditions. Notwithstanding the prohibition of §6707 of this Chapter, an HBeAg or HIV seropositive practitioner may nonetheless perform or participate in a exposure-prone procedure with respect to a patient when each of the following four conditions is met:

1. the practitioner has affirmatively advised the patient, or the patient's lawfully authorized representative, that the practitioner has been diagnosed as HBeAg seropositive and/or HIV seropositive, as the case may be;

2. the patient, or the patient's lawfully authorized representative, has been advised of the risk of the practitioner's transmission of HBV and/or HIV to the patient during an exposure-prone procedure. The practitioner, if a physician or podiatrist, shall personally communicate such information to the patient or patient's representative. If the practitioner is other than a physician or podiatrist, such information shall also be communicated to the patient's physician;

3. the patient, or the patient's lawfully authorized representative, has subscribed a written instrument setting forth:

a. identification of the exposure-prone procedure to be performed by the practitioner with respect to the patient;

b. an acknowledgement that the advice required by Subsection A.1 and 2 hereof have been given to and understood by the patient or the patient's representative; and

c. the consent of the patient, or the patient's lawfully authorized representative, to the performance of or participation in the designated procedure by the practitioner;

4. The practitioner's HBeAg and/or HIV seropositivity has been affirmatively disclosed to each practitioner or other health care personnel who participates or assists in the exposure-prone procedure.

B. Revocation of Consent. Consent given pursuant to Subsection A of the Section may be revoked by a patient, or a patient's lawfully authorized representative, at any time prior to performance of the subject procedure by any verbal or written communication to the practitioner expressing an intent to revoke, rescind or withdraw such consent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6711. Self-Reporting

A. Applicability. Any practitioner who in the course of practice may at any time undertake to perform or participate in an invasive procedure and who is or becomes HBeAg seropositive or HIV seropositive shall give notice of such seropositivity to the board in accordance with the provisions of this Section.

B. Procedure. On or before the applicable initial request deadline specified by Subsection C of this Section, a practitioner required by Subsection A hereof to report his or her HBeAg or HIV seropositivity to the board shall request a self reporting form from the board's physician Medical Consultant/Director of Investigations (MC/DI), by mail directed to the confidential attention of the MC/DI or by personal telephone communication with the MC/DI at the board's offices. In making such request, a requesting practitioner shall advise the MC/DI of the address to which the self-reporting form should be mailed or delivered. Upon receipt of any such request, the MC/DI will promptly mail or deliver a board-approved self-reporting form to the requesting practitioner, accompanied by an addressed, postage-prepaid envelope directed to the confidential attention of the MC/DI. Within 10 days of receipt of such form the requesting practitioner shall complete, subscribe and cause such self-reporting form to be delivered or mailed to the MC/DI.

C. Initial Request Deadlines. The initial request deadline for a practitioner:

1. who is HBeAg or HIV seropositive on or prior to the effective date of the Chapter, or who becomes HBeAg or HIV seropositive within 60 days from the effective date of this Chapter, shall be 90 days from the effective date of this Chapter;

2. who becomes HBeAg or HIV seropositive more than 60 days from the effective date of this Chapter shall be 30 days from the date on which the practitioner becomes seropositive; and

3. who is HBeAg or HIV seropositive on the date on which any license, permit or certification is issued by the board to the practitioner shall be 10 days from such date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

§6713. Confidentiality of Reported Information

A. General Confidentiality. Reports and information furnished to the board pursuant to §6711 of this Chapter and records of the board relative to such information shall not be deemed to constitute public records, but shall be deemed and maintained by the board as confidential and privileged

and shall not be subject to disclosure by means of subpoena in any judicial, administrative or investigative proceeding; provided that such reports, information and records may be disclosed by the board as necessary for the board to investigate or prosecute alleged violations of this Chapter.

B. Confidentiality of Identity of Seropositive Practitioners. The identity of practitioners who have reported their status as carriers of HBV or HIV to the board's Medical Consultant/Director of Investigations (MC/DI) pursuant to §6711 hereof shall be maintained in confidence by the MC/DI and shall not be disclosed to any member, employee, agent, attorney or representative of the board nor to any other person, firm, organization, or entity, governmental or private, except as may be necessary in the investigation or prosecution of suspected violations of this Chapter.

C. Disclosure of Statistical Data. Provided that the identity of self-reporting practitioners is not disclosed, the provisions of this Section shall not be deemed to prevent disclosure by MC/DI or the board of statistical data derived from such reports, including, without limitation, the number and licensure class of practitioners having reported themselves as HBeAg and/or HIV seropositive and their geographical distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 18:

A public hearing on the proposed rules will be conducted by and before the board at 9 a.m., Friday, March 27, 1992, in the Ile de France II Room of the Meridien Hotel, 614 Canal St., New Orleans, LA. At such hearing, an opportunity will be given to all interested persons who attend, on their own behalf or as representative of an organization, to submit data, views, arguments, information or comments on the proposed rules.

Interested persons may also submit data, views, arguments, information or comments on the proposed rules, in writing, to Board of Medical Examiners, Delmar Rorison, Executive Director, Suite 100, 830 Union St., New Orleans, LA, 70112-1499. Written comments must be submitted to and received by the board on or before April 15, 1992.

Delmar Rorison
Executive Director

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Practice, Reporting Requirements for Carriers of HIV, HBV

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

It is not anticipated that the proposed rules 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 rules will have any effect on the board's revenue collections.

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

It is not anticipated that implementation of the proposed rules will have a material effect on costs, paperwork or workload of physicians and other practitioners who may engage in invasive procedures. As the rules would prohibit HIV and HBeAg seropositive practitioners from performing or participating in exposure-prone invasive procedures, the rules could have an adverse impact on the revenue of such practitioners. There is, however, currently no available, reliable data on which to base a rational estimate of the number of such physicians or the magnitude of such impact.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed rules will have any material 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
Office of the Secretary
Bureau of Health Services Financing

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, proposes to adopt the following rule in the Medical Assistance Program.

The bureau has developed program policy and payment standards which will allow federal financial participation in the funding of Optional Targeted Case Management Service for Title XIX eligible infants and toddlers who are categorized as developmentally delayed under the ChildNet Program. The criteria for eligibility for ChildNet includes those infants and toddlers, ages birth through two inclusive (0-36 months) who have extablished medical conditions, other biological factors or are developmentally delayed. These criteria are further defined in Chapter 34 of the Code of Federal Regulations (CFR), Section 303.300.

PROPOSED RULE

General Description

1. Definitions

a. *Family Service Coordination* - case management services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

b. *Individualized Family Service Plan* (IFSP) - a written plan that is developed jointly by the family and service providers which identifies the necessary services to enhance the development of the child as well as the family's capacity to meet the needs of their child. The IFSP must be based on the multidisciplinary evaluation and assessment of the child and the family's identification of their strengths and needs. The initial IFSP must be developed within 45 days following the referral to the child search coordinator with periodic reviews conducted at six-month intervals.

c. *Multidisciplinary Evaluation* (MDE) - the involvement of two or more disciplines or professions in the provision of integrated and coordinated diagnostic procedures to determine a child's eligibility for early intervention services. The evaluation must include all major developmental areas in-

cluding cognitive development with vision and hearing, speech and language development and the assessment of the child's unique needs and the family's identification of their strengths and needs as related to the development of the child.

2. Purpose. To assist eligible recipients in developing skills and knowledge to enable them to access and utilize the medical care, social services, educational and other service delivery systems effectively.

3. Major Components

a. intake;

b. assessments;

c. individualized Family Service Planning;

d. linkage;

e. service implementation/coordination;

f. monitoring;

g. re-evaluation;

h. advocacy;

i. transition.

Specific Provider Responsibilities

1. The provider must be approved by Medicaid of Louisiana as having a comprehensive and cost effective plan, adequate expertise, training and resources for delivery of family service coordination services to eligible recipients.

2. The provider must ensure that enrollee/family receiving family service coordination services meets the high-risk criteria contained in the ChildNet state plan.

3. The provider will ensure that the eligible enrollee/parent(s) of an enrollee signs a release form which gives consent for other providers to share information and send reports on the enrollee's progress to the primary family service coordinator.

4. The provider must ensure that Medicaid-funded family service coordination services for eligible recipients are provided by qualified individuals who meet the following licensure, education, experience, training and other requirements:

a. Bachelor's/Master's degree in health or human services or related field, and

b. two years experience in a health or human services field, (Master's degree in social work, or special education with certification in non-categorical preschool handicapped or other certified areas with emphasis on infants, toddlers and facilities may be substituted for the required two years of experience); or

c. nurse registered and licensed in the state; and

d. two years experience in pediatric, public health or community nursing; and

e. demonstrated knowledge and skills in providing family service coordination services to this target population; and

f. satisfactory completion of at least 40 hours of family service coordination and related orientation which includes 16 hours of inservice training specific to ChildNet approved by Medicaid and ChildNet. A new family service coordinator must receive the minimum 40 hours prior to assuming any family service coordination duties. Certification that the 16 hours of inservice training specific to ChildNet has been completed within the past two years will be considered evidence that that portion of the training has been completed.

5. The provider must ensure that each family service coordinator has completed at least 40 hours of approved annual inservice education in family service coordination and related areas.

6. The provider must ensure that family service coordinators are supervised by qualified individuals who meet the following licensure, education, experience, training and other requirements of either:

a. a Master's degree in social work, and three years experience in social services; or

b. a Bachelor's degree in nursing from an accredited institution and state licensure, and three years experience in pediatric, public health or community nursing; and

c. demonstrated knowledge and skills in providing family service coordination services to this target population; and

d. satisfactory completion of at least 40 hours of family service coordination and related orientation to include 16 hours of inservice training specific to ChildNet approved by Medicaid and ChildNet. A new family service coordinator supervisor must receive the minimum 40 hours prior to assuming supervision of any family service coordination. Certification that the 16 hours of inservice training specific to ChildNet has been completed within the past two years will be considered evidence that that portion of the training has been completed.

7. The provider must ensure that the supervisor-family service coordinator staff ratio does not exceed 1:5 fulltime equivalent staff (FTEs).

8. Upon receipt of a referral for family service coordination, the provider must ensure that an interim family service coordinator is assigned until the primary family service coordinator is determined at the IFSP meeting. The family service coordinator's responsibilities in the multidisciplinary evaluation (MDE) process must include:

a. informing the family of the steps involved in the MDE process; explaining their rights and procedural safeguards securing their level of desired participation;

b. reviewing relevant medical records and prior evaluations;

c. coordinating the performance of evaluations and assessments including a KID-MED Early and periodic screening, diagnosis and treatment (EPSDT) medical screening by a licensed physician to ensure timely completion of the MDE and IFSP;

d. assessing or coordinating the assessment of families' concerns, priorities and resources; and

e. facilitating the development of the IFSP.

9. The family service coordinator's responsibilities in the individualized family service plan (IFSP) must include:

a. convening a meeting to develop the initial IFSP within 45 days of referral;

b. attending the (IFSP) meeting;

c. ensuring that the IFSP meeting is conducted in settings and at times that are convenient to families; in the native language of the family or other mode of communication used by the family. Meeting arrangements must be made with, and written notice provided to family and other participants;

d. ensuring that the following participants must attend and/or provide input to the initial IFSP meetings: the parent(s) of the child, a person or persons directly involved in conducting the evaluations and assessments, as appropriate, persons who will be providing services to the child or family and others;

e. facilitating adherence to federal regulations and the

ChildNet state plan regarding contents and process of IFSP;

f. coordinating a review of the IFSP every six months or more frequently if conditions warrant, or if the family requests, to assure that the contents of the IFSP continue to meet the recipient's needs;

g. coordinating an annual meeting to evaluate the IFSP and, as appropriate, to review its provisions;

h. coordinating and facilitating access to needed services, resources or supports as indicated on the IFSP;

i. training and supporting the enrollee/family in the use of personal and community resources identified in the IFSP;

j. providing consumer advocacy services so that the eligible recipient receives the benefit of services available by negotiating with providers;

k. monitoring service delivery in order to assess the progress and quality of services and ensuring that services are being provided in accordance with the IFSP;

l. assisting the enrollee/family in maintaining the services, resources and supports that are currently being provided; and

m. facilitate the development of a transition plan to pre-school services, if appropriate.

10. The provider must ensure that only one individual who is an employee of the enrolled family service coordinator provider and is qualified to provide family service coordination services serves as the primary family service coordinator for each enrollee. The family service coordinator must be determined at the IFSP meeting with concurrence of the family. The family service coordinator should be chosen from a profession which is most relevant to the enrollee and family's needs as identified in the IFSP. The provider must agree to abide by this decision. The enrollee may request a change in the family service coordinator at any time. Such requests must be promptly carried out by the provider to ensure the enrollee freedom of choice of providers.

11. The provider is prohibited from billing Medicaid for provision of family service coordination provided by another provider.

12. The provider must ensure that appropriate professional consultation is available to each family service coordinator at all times. Consultation services may be provided by qualified professionals who are employed by or are on contract with the provider.

13. The provider must ensure that each enrollee receive a KID-MED (EPSDT) medical screening in accordance with the periodicity schedule at under one month, two months, four months, six months, nine months, 12 months, 15 months, 18 months, 2 years. In addition, the provider must ensure that the family understands the benefits of preventive health care for their infant, toddler and siblings and how to receive KID-MED (EPSDT) services for their children.

14. The provider must ensure that each family receives information regarding the WIC Program and is referred immediately for participation in the WIC Program.

15. The provider must ensure that the maximum monthly caseload of recipients (Medicaid and non-Medicaid) does not exceed 35 cases per full-time equivalent (40 hours per week) family service coordinator. The provider must ensure that the maximum monthly caseload does not exceed 18 cases per half-time equivalent. The maximum caseload for a family service coordinator working fewer than 20 hours a week must be determined according to the above ratios.

16. The provider must ensure that the family service coordinator contacts the enrollee/family as often as is necessary to carry out the Individualized Family Service Plan (IFSP), including at least one home visit within the first 30 days, telephone contact at least once per month and a face-to-face contact in the home every 90 days minimum.

17. The provider must agree to permit Medicaid of Louisiana to determine the efficacy of the services and program established and the Medicaid funds expended under this program. The provider shall provide to Medicaid of Louisiana, its authorized representatives, representatives of the Department of Health and Human Services (DHHS) and/or the state attorney general's Medicaid Fraud Control Unit such information and data as Medicaid may from time to time require or request, such information to be provided in the form and manner as may be prescribed by Medicaid of Louisiana.

18. The provider must notify Medicaid of Louisiana, in writing, if it is unable to provide the family service coordination services in accordance with established policies and procedures.

Failure to adhere to the requirements set forth herein shall constitute grounds for termination of the provider agreement and recoupment.

19. The provider must ensure that the family service coordinator maintains adequate documentation in a separate enrollee service coordinator record which includes but is not limited to:

a. documentation of high-risk status according to the Louisiana eligibility criteria for early intervention services;

b. documentation of the enrollee's voluntary agreement to participate in the program as evidenced by the family's signature on appropriate program forms;

c. documentation of an assessment or evaluation of the enrollee's needs, including: information on the recipient's history, including an assessment of barriers to adequate service acquisition and special problems; need for referral to other public or private agencies; and the need for medical, mental health, nutritional, educational, rehabilitation or day care services. This assessment or evaluation must be reflected in the individual family service plan;

d. an individual family service plan which identifies the enrollee's specific needs and sets measurable objectives related to meeting his/her needs, which is agreed to by the IFSP committee members including the family as evidenced by their signatures on the form(s) approved by Medicaid of Louisiana;

e. progress notes to include description of the initial needing of the family service coordinator with the eligible family, the home or alternate site visit (if alternate site is chosen, the reason must also be recorded) and information/assessment derived from this visit, results of contacts with or on behalf of the eligible recipient. Contact activity logs must specify the date and location of the contact, the individual contacted, the purpose of the contact and the results of the contact. Progress notes must also address how the enrollee is progressing toward the goals set in the individual family service plan. Progress notes must be summarized at least on a monthly basis. The contact activity log must be updated weekly;

f. copies of required evaluations;

g. a release form signed by the enrollee/family giving permission to treating providers to send reports on his/her

progress to the primary family service coordinator; and/or

h. copies of reports from providers to whom the recipient was referred; documentation of referrals/appointments made and kept by the family.

Reimbursement and Recoupment

1. Providers of family service coordination services will be reimbursed using a prospective negotiated fee for each type of case management service based on allowable costs.

2. Medicaid of Louisiana may recoup payments made on claims when all appropriate requirements are not timely met and documented.

3. Re-evaluate the appropriateness of fees which are based on allowable costs and efficient and economic use of resources by the provider. Providers must submit annual cost reports in a timely manner within 90 days of the end of the fiscal year.

4. Each enrollee shall be limited to 245 units of service per calendar year. Services shall be provided in 15 minute units. The Medicaid of Louisiana/Medical Services Manual entitled Case Management Services, Chapter 4, provides detailed information on units, specifically:

5 - 22 minutes = 15 minutes (1 unit)
23 - 37 minutes = 30 minutes (2 units)
38 - 52 minutes = 45 minutes (3 units)
53 - 67 minutes = 1 hour (4 units)

Interested persons may submit written comments to the following address: Carolyn Maggio, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule will be held on Friday, March 27, 1992, in the Department of Transportation and Development Auditorium, 1201 Capitol Access Road, Baton Rouge, LA at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing.

Implementation of this rule is dependent on the approval of the Health Care Financing Administration (HCFA). Disapproval of the change by HFCA will automatically cancel the provisions of this rule and current policy will remain in effect.

J. Christopher Pilley
Secretary

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Case Management for Developmentally Delayed Infants and Toddlers

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

The estimated implementation cost for FY 91/92 will be $46,503 for Case Management Services, of which $11,532.74 is the projected cost to the state. Projected total costs for FY 92/93 are $6,899,200 of which $1,694,443.60 is the state share. The FY 93/94 projected costs are $20,145,125 for the total of which the state share will be $4,947,642.70.

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

Implementation costs associated with adoption of this proposed rule for the provision of Infants and Toddlers Case Management Services will result in increased revenues of $34,970.26 during FY 91/92, $5,204,756.40 during FY 92/93, and $15,197,482.30 during FY 93/94.

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

Infants and toddlers who are Title XIX recipients would be directly affected by this proposal as it would provide assistance to those who are eligible.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no impact on competition or employment.

Carolyn O. Maggio
Director

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Insurance
Commissioner of Insurance

Pursuant to the provisions of R.S. 49:950 et seq. and R.S. 22:904, the commissioner of insurance gives notice of his intent to adopt Regulation 39 for the purpose of implementing Act 103 of the 1990 Legislative Session. This regulation will establish the procedures and criteria necessary for compliance with Act 103 of 1990 which requires the submission of an actuarial statement of opinion by insurers selling certain types of liability policies.

Proposed Regulation 39
Statement of Actuarial Opinion

§1. Authority

This regulation is promulgated under the authority of Title 22:904 of the Insurance Code of the State of Louisiana and the Administrative Procedure Act, R.S. 49:950 et seq.

§2. Purpose

The purpose of this regulation is to implement Act 103 of the 1990 Regular Legislative Session. It is further intended to protect the public from the risk of insolvent insurance companies by requiring companies issuing certain types of policies to provide actuarial statement of opinion of loss and loss adjustment expense reserves. This will assist the agency in ensuring that adequate reserves are retained by insurers so that claims can be paid and minimize the necessity of putting companies into conservation and/or liquidation.

§3. Applicability and Scope

This regulation shall apply to all companies which issue policies of personal injury liability insurance, policies of employer's liability insurance, and policies of worker's compensation insurance. Companies which issue these types of policies shall attach to page 1 of the Annual Statement, the statement of a qualified actuary, entitled "Statement of Actuarial Opinion," setting forth his or her opinion relating to loss and loss adjustment expense reserves.

§4. Definitions

A. *Qualified actuary* is a person who is either:

1. a member in good standing of the Casualty Actuarial Society; or

2. a member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinion by the Casualty Practice Council of the American Academy of Actuaries; or

3. a person who otherwise has competency in loss reserve evaluation as demonstrated to the satisfaction of the insurance regulatory official of domiciliary state. In such case, at least 90 days prior to the filing of its annual statement, the insurer must make a request to the commissioner that the person be deemed qualified. That request must be approved or denied by the commissioner or his designee. The request must include NAIC Biographical form and a list of all loss reserve opinions and/or certifications issued in the last three years by this person.

B. *Insurer* means an insurer authorized to write property and/or casualty insurance under the laws of any state and includes but is not limited to fire and marine companies, general casualty companies, local mutual aid societies, statewide mutual assessment companies, mutual insurance companies other than life, farm mutual insurance companies, county mutual insurance companies, Lloyd's plans, reciprocal and interinsurance exchanges, captive insurance companies, risk retention groups, stipulated premium insurance companies, and non-profit legal service corporations.

C. *Annual Statement* means the annual financial statement required to be filed by insurers with the commissioner.

§5. Content

The "Statement of Actuarial Opinion" shall be in the format of and contain the information required by Section 12 of the Annual Statement Instructions: Property and Casualty.

§6. Exemptions

Companies subject to this regulation may apply for an exemption. If an exemption is granted a certified copy of the approved exemption must be filed with the annual statement in all jurisdictions in which the company is authorized to do business. An exemption may be applied for solely on the following grounds:

A. Automatic Exemption

1. An insurer otherwise subject to this regulation that has less than $1,000,000 total direct plus assumed written premiums during a calendar year or that has less than a total of 1,000 policyholders and certificate holders at the end of a calendar year, in lieu of the certification required for the calendar year, may submit an affidavit under oath of an officer of the insurer that specifies that amount of direct, plus assumed, premiums written and the total number of policyholders and certificate holders.

2. An insurer who intends to file for an exemption under this Section must submit a letter of intent to its domiciliary commissioner no later than December 1 of the calendar year for which the exemption is to be claimed. The commissioner may deny the exemption prior to December 31 of the same year if he deems the exemption inappropriate. If an insurer intends to file for an exemption for calendar year 1991 it must do so no later than January 31, 1992.

B. Exemption for Insurers under Supervision or Conservatorship, unless ordered by the domiciliary commissioner, an insurer that is under supervision or conservatorship pursuant to statutory provision is exempt from the filing requirement contained herein.

C. Exemption for Nature of Business, an insurer otherwise subject to this regulation and not eligible for an exemption as enumerated above may apply to its domiciliary commissioner for an exemption based on the nature of the business written. This exemption is available to those companies writing property lines only.

D. Financial Hardship Exemption

1. An insurer otherwise subject to this regulation and not eligible for any of the exemptions enumerated above may apply to the commissioner for a financial hardship exemption.

2. Financial hardship is presumed to exist if the projected reasonable cost of the certification would exceed the lesser of:

a. one percent of the insurer's capital and surplus reflected in the insurer's annual statement filed with the department for the calendar year for which the exemption is sought; or

b. three percent of the insurer's net direct plus assumed premiums written during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with its domiciliary commissioner.

The proposed regulation is to become effective May 20, 1992. Interested parties may submit written comments on the proposed regulation until 4:30 p.m., March 10, 1992 at the following address: C. Noel Wertz, Staff Attorney, Box 94214, Baton Rouge, LA 70804-9214.

James H. "Jim" Brown
Commissioner

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Reg 39- Statement of Actuarial Opinion

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

It is not anticipated that the Department of Insurance will incur any costs or savings as a result of implementing this regulation. This is so because attachment of a statement of opinion of the reasonableness of loss reserves by an actuary will not impact the financial review responsibilities of the department's financial examiners nor will it require any additional personnel.

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

Adoption of this regulation will not have any effect on revenue collections by the state or local governmental units. Revised Statute 22:904, pursuant to which this regulation is issued, does not impose any fees or fines on the companies which must comply with its requirements.

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

Insurers will incur costs for preparing and filing the statements required under this regulation. It is estimated that the costs will range from $5,000 to $6,000 for small companies up to $35,000 for big-line complicated companies, with the average cost running between $8,000 to $18,000. Also, the general public and the insurance consumer will benefit from closer regulation of insurance which will reduce the number of insolvencies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No data is available at this time to fully assess the

impact of the rule on competition and employment. However, it is anticipated that there will be additional employment of actuaries by the insurance companies subject to this rule for the purpose of preparing the statements to be filed with the department.

Darrell L. Cobb	John R. Rombach
Deputy Commissioner	Legislative Fiscal Officer

NOTICE OF INTENT

Department of Insurance
Commissioner of Insurance

Pursuant to the provisions of R.S. 49:950 et seq. and R.S. 22:1395.18C, the commissioner of insurance gives notice of his intent to adopt Regulation 40 for the purpose of implementing Act 998 of the 1991 Regular Legislative Session. This regulation establishes the form and content for a disclaimer which is to preface the summary description document being prepared by the Louisiana Life and Health Insurance Guaranty Association.

Proposed Regulation 40
LLHIGA Act Summary Document Disclaimer

§1. Authority

This regulation is promulgated under the authority of Title 22:1395.18C of the Insurance Code of Louisiana and the Administrative Procedure Act, R.S.49:950 et seq.

§2. Purpose

The purpose of this regulation is to implement Act 998 of the 1991 Regular Legislative Session which is designed to protect covered persons against the risk of insurer insolvencies under certain life and health insurance policies.

§3. Applicability and Scope

This regulation applies to the Louisiana Life and Health Insurance Guaranty Association (LLHIGA) and its member insurers as defined by R.S. 22:1395.3. It sets forth the form and content of a disclaimer statement which is to be prepared by LLHIGA as a cover sheet to the summary document it is also required to prepare. Pursuant to R.S. 22:1395.18B the summary document with the disclaimer is to be delivered with each life or health insurance policy, as described in R.S. 1395.3(B)(1), issued or delivered in Louisiana.

§4. Form and content

The disclaimer shall contain the information listed below in the following form:

LOUISIANA LIFE AND HEALTH INSURANCE
GUARANTY ASSOCIATION DISCLAIMER

The Louisiana Life and Health Insurance Guaranty Association provides coverage of claims under some types of policies if the insurer becomes impaired or insolvent. COVERAGE MAY NOT BE AVAILABLE FOR YOUR POLICY. Even if coverage is provided, there are significant limits and exclusions. Coverage is always conditioned on residence in this state. Other conditions may also preclude coverage.

Insurance companies and insurance agents are prohibited by law from using the existence of the association or its coverage to sell you an insurance policy.

You should not rely on availability of coverage under the Louisiana Life and Health Insurance Guaranty Association when selecting an insurer.

The Louisiana Life and Health Insurance Guaranty Association or the Department of Insurance will respond to any questions you may have which are not answered by this document.

LLHIGA	Department of Insurance
Drawer 44126	Box 94214
Baton Rouge, LA 70804	Baton Rouge, LA 70804-9214.

The proposed regulation is to become effective May 20, 1992. Interested parties may submit written comments on the proposed regulation until 4:30 p.m., March 10, 1992 at the following address: C. Noel Wertz, Staff Attorney, Box 94214, Baton Rouge, LA 70804-9214.

James H. "Jim" Brown
Commissioner

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Reg 40- LLHIGA Act Summary Disclaimer

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

It is not anticipated that the Department of Insurance will incur any costs or savings as a result of implementing this regulation. This is so because the rule only sets forth the form and content of a disclaimer statement which is to then be prepared by the Louisiana Life and Health Insurance Guaranty Association (LLHIGA) to accompany a summary descriptive document which it must also prepare. These documents are to be delivered with all life and/or health insurance policies which are issued in Louisiana pursuant to the provisions of R.S. 22:1395.18.

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

Adoption of this regulation will not have any effect on revenue collections by the state or local governmental units. There are no fees, fines or other revenue generating activities imposed under the statute.

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

It is anticipated that this regulation will impose some costs on those companies which are member insurers of LLHIGA. All of the LLHIGA member insurers will be assessed fees for administrative and other expense incurred by LLHIGA. The data is not available at this time to determine what percentage of the assessment will go towards the cost of preparing, printing and distributing the disclaimer. However, it is not anticipated that the amount will be significant.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No data is available at this time to assess the impact of the rule; however, it is not anticipated that there will be any effect on either competition or employment.

Darrell L. Cobb	John R. Rombach
Deputy Commissioner	Legislative Fiscal Officer

NOTICE OF INTENT

Department of Public Service
Public Service Commission

The Louisiana Public Service Commission at its open session held October 22, 1991 adopted the following general order:

At the monthly open session held October 22, 1991, in Baton Rouge, Louisiana, the commission recognized that historically it has empowered and relied upon its executive secretary to serve as its appointing authority with regard to classified employees. All actions made by the secretary as the commission's agent have been ratified by the commission's reliance on the secretary to discharge this duty. It is the intent of the commission today to reaffirm and memorialize this historical practice. Finally the commission desires to state for the record that it has chosen in the past to locate appointing authority for classified employees in the executive secretary and that the commission desires that the executive secretary continue to exercise appointing authority.

Marshall B. Brinkley
Executive Secretary

NOTICE OF INTENT

Department of Transportation and Development

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Department of Transportation and Development intends to adopt the following revision to its rule on the subject of Escorts for Oversize Loads, in accordance with the provisions of R.S. 32:2.

Title 73
Department of Transportation and Development
Part I. Weights and Standards
Chapter 3. Oversize and Overweight Permit
§309. Permit Restrictions

* * *

B. Escorts

1. Private escorts are required for all vehicles and loads:

a. over 12 feet wide and up to 16 feet wide;

b. over 90 feet long and up to 125 feet long;

2. State police escorts are normally required for vehicles and loads:

a. over 16 feet in width;

b. over 125 feet in length;

c. on any vehicle or load deemed necessary by the department.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 5:38 (February 1979), amended LR 18:

Chapter 5. Oversize and Overweight Vehicles or Loads
§561. Permit Restrictions

Permits are issued on the condition that all required restrictions must be complied with. Any additional cost in complying with these restrictions is to be borne by the permittee. The penalty for violating any permit restriction is $100. Exception, if a vehicle has a permit, but the permit is not in the vehicle, the fine is $25. At the present time, the following DOTD regulations are in effect:

A. Escorts

1. State Police Escorts

a. State police escorts are required for all vehicles and loads:

i. over 16 feet in width;

ii. over 125 feet in length;

iii. on any vehicle or load deemed necessary by the department to be in the best interest of the state.

b. Escorts should be arranged at the troop nearest the movement.

c. State police escorts must be used for required escorted loads on all state highways outside of municipality limits.

2. City Police Escorts. City police escorts may be required within municipalities on highways other than the interstate system. The duty to verify this requirement is the responsibility of the permittee.

3. Private Escorts

a. Private escorts are required for all vehicles and loads:

i. over 12 feet wide and up to 16 feet wide;

ii. over 90 feet long and up to 125 feet long.

b. All private escort vehicles must have a *Louisiana Approved Escort Vehicle* permit. This permit may be obtained from any weights and standards police officer (mobile or stationary unit). Companies domiciled outside of the state of Louisiana must pay a $10 fee for a *Louisiana Approved Escort Vehicle* permit.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 4:446 (November 1978), amended LR 18:

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this notice of intent to: James B. Norman, Vehicle Permits Issuing Manager, Department of Transportation, and Development, Box 94245, Baton Rouge, LA 70804-9245.

Eugene P. Waguespack
Acting Secretary

Fiscal and Economic Impact Statement
For Administrative Rules
Rule Title: Escorts for Oversize Loads
(LAC 73:I.309 and 561)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is none.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is none.

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

Savings would be realized in the trucking industry by the wider use of their own escort vehicles and drivers. Some savings would also be realized in greater availability of their own escorts instead of having to wait for a state police off-duty officer to be located.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Revised rule should not have any effect on competition or employment since the trucking industry presently has in place provisions and certifications for "civilian escorts."

Neil Wagoner
Secretary

David W. Hood
Senior Fiscal Analyst

Committee Report

COMMITTEE REPORT

House Natural Resources Subcommittee
Oversight Review

December 20, 1991

Pursuant to the provisions of R.S. 49:968, the House of Representatives Natural Resources Subcommittee on Oversight met on December 20, 1991 and reviewed certain proposed rules by the Louisiana Wildlife and Fisheries Commission to provide for a spotted seatrout management plan.

There was lengthy testimony both for and against the proposed rules. The opponents testified that the plan was not necessary, that it adversely impacted commercial fishermen and that there was insufficient scientific data to support the proposed rules. In accordance with R.S. 49:968(H)(2), the subcommittee determined that the provisions of the rules were severable. The subcommittee severed and found unacceptable the following portions of the proposed rule:

1. All of Paragraph B regarding the prohibition against the commercial taking of spotted seatrout on weekends during the open season, was found unacceptable without objection, after the substitute motion to accept the provision failed by a vote of 3 yeas and 7 nays.

2. All of Paragraph C regarding the annual quota and only the words "one million pound" in Paragraph D regarding the annual commercial quota for spotted seatrout, was found unacceptable without objection, after the substitute motion to accept the provision failed by a a vote of 4 yeas and 6 nays.

In accordance with R.S. 49:968, copies of this report are being forwarded this date to the governor, the Wildlife and Fisheries Commission, the Louisiana Senate, and the State Register.

Randy Roach
Chairman

GOVERNOR'S RESPONSE TO COMMITTEE REPORT

December 30, 1991

Dear Representative Roach:

Pursuant to R.S. 49:968 I am hereby notifying you of my decision concerning the Subcommittee's action, taken on Friday, December 20, on the rules and regulations affecting the management of the spotted seatrout fishery in Louisiana. I have decided to disapprove the action of the Oversight Subcommittee in so far as it purports to find unacceptable Paragraphs B and C of the proposed rules and regulations.

I strongly believe that the actions proposed by the Wildlife and Fisheries Commission are reasonable and necessary for the protection and management of this important resource and that they should be implemented as soon as possible.

My thanks to you and your Oversight Subcommittee for your time and hard work.

Buddy Roemer
Governor

Potpourri

POTPOURRI

Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Horticulture Commission

The next Landscape Architect Registration Exam for licensure in landscape architecture will be given at Louisiana State University, Baton Rouge, Louisiana on June 15, 16, and 17, 1992. The deadline for getting in the application and fee is March 2, 1992. All applications and fees must be in the Horticulture Commission office no later than 4:30 p.m. on the deadline date.

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 Agriculture and Forestry
Horticulture Commission

The next retail floristry examinations will be given at 9:30 a.m. daily at the 4-H Mini Farm Building, LSU Campus, Baton Rouge, LA. The exam will be given in Baton Rouge permanently. The deadline for getting in application and fee is April 1, 1992. 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 April 21-22, 1992.

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 Health and Hospitals
Bureau of Health Services Financing

Notice is hereby given that the department is withdrawing the Solicitation of Offers to develop 34 nursing facility beds in LaSalle Parish, announced to the public in September, 1991.

J. Christopher Pilley
Secretary

POTPOURRI

Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 51 claims in the amount of $104,585.29 were received in the month of January 1992, 32 claims in the amount of $80,602.96 were paid and four claims were denied.

Loran C. coordinates of reported underwater obstructions are:

27678	46002	St. Mary
27628	46894	St. Mary
26694	46977	Cameron
27805	46875	Terrebonne
28563	48867	Jefferson
27679	46902	St. Mary
27603	46924	St. Mary
27019	46953	Vermilion
28813	46821	Plaquemines
28568	46854	Jefferson
28305	46827	Plaquemines
27232	46941	Vermilion
27340	46942	Vermilion
28623	47037	Lake Pontchartrain
28715	47042	Lake Pontchartrain

A list of claimants, and amounts paid, may be obtained from the Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by phone 504-342-0122.

Jack McClanahan
Secretary

POTPOURRI

Department of Social Service
Rehabiliation Services

Louisiana Rehabilitation Services has made a minor change in its policy manual in Section V, Eligibility and Ineligibility Decisions Part B.1.d., to reflect the following italicized addition: In all cases of a mental or emotional disorder, an examination provided by a Psychiatrist, or a *licensed Psychologist*.

Gloria Bryant-Banks
Secretary

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