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# EXECUTIVE ORDERS

## EXECUTIVE ORDER EWE 95-25

### Project Restore Task Force

WHEREAS: the state of Louisiana is committed to protecting and restoring its coast; and

WHEREAS: state and local governments are faced with increased expense and difficulty in disposing of solid waste; and

WHEREAS: the disposal of solid waste is an expense to Louisiana citizens, businesses and industry; and

WHEREAS: the state of Louisiana would benefit from the close examination of waste materials as potential coastal restoration material;

NOW, THEREFORE, I, EDWIN W. EDWARDS, Governor of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: That there shall be a Governor's Advisory Task Force on the use of solid waste material as potential material for coastal restoration projects.

SECTION 2: The project shall be known as "Project Restore."

SECTION 3: The purpose of the Project Restore Task Force shall be as follows:

A. Advise the governor's office regarding measures relative to the implementation of Project Restore.

B. Advise the secretaries of the Departments of Natural Resources and Environmental Quality on actions, roles and responsibilities their departments should play.

C. Coordinate activities with the Environmental Protection Agency in accordance with requirements of the National Environmental Policy Act on federal actions and of the Coastal Wetlands Planning, Protection and Restoration Act procedures.

SECTION 4: The task force shall be composed of the following members:

- A. secretary of Natural Resources (Co-chair);
- B. secretary of Environmental Quality (Co-chair);
- C. a representative of the Governor's Office, Coastal Activities;
- D. representatives from the following within state government:
  1. the Department of Natural Resources, Office of Coastal Restoration and Management;
  2. the Department of Environmental Quality, Office of Solid and Hazardous Waste;
  3. the Department of environmental Quality, Office of Water Resources;
  4. the Department of Wildlife and Fisheries;
  5. the Louisiana Universities Marine Consortium;
  6. the Institute for Recyclable Materials;

7. Louisiana State University Sea Grant Program;
8. University of Southwestern Louisiana;
9. Department of Agriculture and Forestry;
10. the Institute for Environmental Studies, LSU;
11. the Center for Energy and Environmental Studies, Southern University;

E. a representative from the Coalition to Restore Coastal Louisiana;

F. two representatives from the construction industry;

G. two representatives from the material construction industry;

H. four representatives from large quantity waste generators;

I. two members at large;

J. a representative of a coastal land owner.

SECTION 5: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Project Restore Task Force in implementing the provisions of this executive order.

SECTION 6: The provisions of this executive order are effective upon signature and shall remain in effect until amended, modified, or rescinded by operation of law.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, Louisiana, on this 10th day of August, 1995.

Edwin Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9509#003

## EXECUTIVE ORDER EWE 95-26

### State Land Sale Restoration

WHEREAS: Act 38 of 1914 (now R.S. 41:98) vested the governor of Louisiana with authority to withdraw from sale or entry any of the vacant and unappropriated public lands and lake beds or bottoms belonging to the State, whenever in his opinion, they appear to be more valuable for mineral than any other purpose, and to restore to sale or entry all withdrawn lands, at his discretion; and

WHEREAS: acting under the said authority, Honorable Ruffin G. Pleasant, then Governor of Louisiana, by executive order issued on March 20, 1917, withdrew from public sale and entry all State lands, except those adjudicated to the State for non-payment of taxes; and

WHEREAS: Section 4 of Article IX of the Constitution of Louisiana of 1974 provides that in all cases the mineral rights on any and all property sold by the State shall be reserved, except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the State for taxes; and

# EMERGENCY RULES

## DECLARATION OF EMERGENCY

Department of Agriculture and Forestry  
Office of Forestry  
and  
Department of Revenue and Taxation  
Tax Commission

### Timber Stumpage Values (LAC 7:XXXIX.20101)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 47:633, the commissioner of Agriculture and Forestry finds that this emergency rule is required so that timber severance tax computation and collection can continue uninterrupted until adoption of a final rule can be completed. By law, the timber stumpage values are set annually in a meeting of the Louisiana Forestry Commission and the Louisiana Tax Commission on the second Monday in December. An imminent peril to public health, safety, and welfare would exist if timber severance tax revenues are not available for state and parish governmental entities.

The effective date of this emergency rule is August 29, 1995 and it shall be in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

### Title 7

### AGRICULTURE AND ANIMALS

### Part XXXIX. Forestry

### Chapter 201. Timber Stumpage

### §20101. Stumpage Values

The Louisiana Forestry Commission, and the Tax Commission, as required by R.S. 47:633, adopted the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 1995:

- |                              |              |             |
|------------------------------|--------------|-------------|
| 1. Pine trees and timber     | \$293.44/MBF | \$36.68/ton |
| 2. Hardwood trees and timber | \$181.36/MBF | \$19.09/ton |
| 3. Pine Chip and Saw         | \$67.82/cord | \$25.12/ton |
| 4. Pine pulpwood             | \$24.35/cord | \$ 9.02/ton |
| 5. Hardwood pulpwood         | \$10.40/cord | \$ 3.65/ton |

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:1543.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Forestry, and the Louisiana Forestry Commission, LR 4:9 (January 1978), amended LR 5:7 (January 1979), LR 6:728 (December 1980), LR 7:627 (December 1981), LR 8:651 (December 1982), LR 9:848 (December 1983), LR 10:1038 (December 1984), LR 11:1178 (December 1985), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission, LR 12:819 (December 1986), LR

WHEREAS: the commissioner of Administration has recommended that the hereinafter described property be restored to sale, since the obvious and apparent motive for the withdrawal from sale or entry of the public lands was for the protection of the State in its ownership of the minerals underlying said lands, and because the constitution now requires the reservation in all cases of the mineral rights on any and all property sold by the State, there is no longer any particular necessity when the lands hereinafter described should not be restored to sale;

NOW, THEREFORE, I, EDWIN W. EDWARDS, Governor of the State of Louisiana, do hereby issue this, my executive order, restoring to sale the following described land, and directing that the same shall be sold under the provisions of Act 215 of 1908, as amended (now R.S. 41:131 et seq). Excepting and reserving, however, to the State of Louisiana all minerals in the land so patented, and to it, or those authorized by it, the right to prospect for, mine and remove such deposits from the same in accordance with Section 4 of Article IX of the Constitution of 1974. Except from the lands hereinafter described and not included in this sale, are the waters and beds of all bayous, lagoons, lakes and other water bodies, whether navigable or non-such property to a public purpose; like exception and exclusion are made of the waters and beds of all inland navigable waters, as well as arms of the sea, pursuant to the statutory codal or constitutional law of the State, viz

A certain tract of State-owned land identified as Lot 15, Section 17, T15NR10W, Bienville Parish, containing 20.04 Acres, more or less, in the former bed of Lake Bisteneau and more fully shown on a plat filed in the State Land Office.

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, Louisiana, on this 14th day of August, 1995.

Edwin Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9509#004

13:432 (August 1987), LR 14:9 (January 1988), LR 15:5 (January 1989), LR 16:16 (January 1990), LR 17:476 (May 1991), LR 18:6 (January 1992), LR 19:611 (May 1993), LR 20:408 (April 1994), LR 21:

Bob Odom, Commissioner  
Agriculture and Forestry

Malcolm B. Price, Chairman  
Tax Commission

9505#022

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Structural Pest Control Commission

#### Bait and Baiting Systems

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) and R.S. 3:3203(A), the commissioner of Agriculture and Forestry is amending the following rules for the implementation of regulations governing the use of baits and baiting systems as a means of treating structures.

This emergency adoption is necessary in order to protect the health and safety of the public by allowing the department to immediately put into place new regulations governing the qualifications of personnel making bait and baiting systems applications and to implement a pilot program for bait and baiting applications of structures. The bait and baiting systems are newly labeled products and systems and afford the public a new way to protect their homes from termites. The department has further deemed these regulations necessary to provide minimum specifications for the application of baits and baiting systems.

The effective date of these rules is September 1, 1995, and shall remain in effect for 120 days or until these rules take effect through the normal promulgation process, whichever occurs first.

#### Emergency Rule

The commissioner hereby establishes a pilot program and regulations for the use of bait and baiting systems that contain Hexaflumuron and Sulfluramid. The Structural Pest Control Commission shall reevaluate the pilot program and the regulations for the use of bait and baiting systems that contain Hexaflumuron and Sulfluramid prior to the end of the first quarter of calendar year 1996 and may make changes during any appropriately notified meetings.

A. Any licensee, licensed in the termite phase, or any technician, registered in the termite phase and working under the supervision of a licensee, licensed in the termite phase, that applies baits and/or baiting systems shall register with the commission.

B. Any licensee or any person working under the supervision of a licensee, that applies baits and/or baiting systems, shall be certified in the use of the baits and baiting systems, by the manufacturer of the product, prior to any

application of the bait or baiting system. Manufacturer certification and training programs shall have approval of the agenda prior to the program, by the Louisiana Department of Agriculture and Forestry.

C. Any person or dealer, prior to selling a bait or baiting system to control subterranean termites, must first register such intent by notifying the Louisiana Department of Agriculture and Forestry and the Louisiana Structural Pest Control Commission office in writing prior to making such application.

D. All baits and baiting systems applications shall be contracted and reported according to R.S. 3:3370, and LAC 7:XXV.14115 and pay the fee as described in LAC 7:XXV.14115.E.

1. Baits and baiting systems may be used as a stand alone termite treatment only with written approval by LDAF.

2. Baits and baiting systems may be used as a supplement to traditional ground termiticide treatments.

E. Bait and baiting systems shall be used according to label and labeling and shall include, but not be limited to the following:

#### 1. Bait and Baiting Systems Containing Hexaflumuron

a. Monitoring. Monitoring shall be used to detect the presence of subterranean termites and generate feeding activity for bait (toxicant) delivery. Monitoring station spacings shall not exceed 20 feet where soil access is not restricted and shall be placed in the soil and recorded on a map or graph of the site. Monitoring stations shall be inspected at regular intervals, not less than monthly and data shall be recorded on the map or graph.

b. Bait Delivery. When termites are detected (minimum of 40 worker termites) during monitoring, the monitoring device shall be removed and replaced with the bait toxicant. Bait toxicant shall be monitored not less than once monthly and shall be replaced according to label and labeling.

c. Resumptions of monitoring for the presence of termite activity after control has been achieved shall follow according to the original bait termite contract and label and labeling.

d. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

#### 2. Bait and Baiting System Containing Sulfluramid

a. Monitoring. Monitoring shall be used to detect the presence of subterranean termites. Monitoring may include the use of the toxicant in or on monitoring devices. Monitoring stations shall be inspected at regular intervals, not less than monthly and data shall be recorded on the map or graph.

b. Bait Delivery. Bait toxicant shall be monitored not less than once monthly and shall be replaced according to label and labeling.

c. Resumptions of monitoring for the presence of termite activity after control has been achieved shall follow according to the original bait termite contract and label and labeling.

d. A consumer information sheet, supplied by the manufacturer and approved by the commission, shall be supplied to the registered pest control operator. The pest control operator shall, in turn, supply a copy of the consumer information sheet to all persons contracted.

F. Records of contracts, graphs, monitoring, bait applications, and resuming of monitoring, shall be kept according to LAC 7:XXV.14113.

G. All buildings that cannot be treated according to the bait and baiting minimum specifications must have a waiver of the listed item or items signed, by the owner, prior to the baiting treatment. A copy of signed waiver must be filed with the Louisiana Department of Agriculture and Forestry with the Monthly Termite Eradication Reports.

Bob Odom  
Commissioner

9509#021

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

#### Bleeder Medication (LAC 35:I.1307)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule change effective August 24, 1995, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

This action is necessary to avoid misinterpretation of the rule as previously adopted.

#### Title 35

#### HORSE RACING

#### Part I. General Provisions

#### Chapter 15. Permitted Medication

#### §1507. Bleeder Medication

\* \* \*

E. A bleeder shall be eligible to run as follows, but only after a recorded workout.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141 and R.S. 4:142.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 6:543 (September 1980), LR 9:547 (August 1983), amended by the Department of Economic Development, Racing Commission, LR 15:7 (January 1989), LR 21:

Paul D. Burgess  
Executive Director

9509#026

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

#### Entry After Excused (LAC 35:V.6353)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule change effective August 24, 1995, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever comes first.

This action is necessary so that the race tracks can enforce the correct interpretation of the rule immediately.

#### Title 35

#### HORSE RACING

#### Part V. Racing Procedures

#### Chapter 63. Entries

#### §6353. Entry After Excused

A. The entry of any horse which has been excused by the stewards from starting due to physical disability or sickness shall not be accepted until the expiration of three calendar days after the day the horse was excused.

B. ...

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

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:437 (December 1976), LR 3:34 (January 1977), LR 4:280 (August 1978), amended LR 11:615 (June 1985), amended by the Department of Economic Development, Racing Commission, LR 14:702 (October 1988), LR 21:

Paul D. Burgess  
Executive Director

9509#027

## DECLARATION OF EMERGENCY

### Department of Economic Development Racing Commission

#### Trifecta Wagering—Field Less than Eight (LAC 35:XIII.11115)

The Racing Commission is exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 4:141 et seq., adopts the following emergency rule change effective August 24, 1995, and it shall remain in effect for 120 days or until this rule takes effect through the normal promulgation process, whichever occurs first.

This action is necessary so that the race tracks can immediately allow trifecta wagering on their racing programs when there are as few as eight horses in a race.



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

**Chapter 111. Trifecta Wagering  
§11115. Field Less Than Eight**

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

B. ...

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 by the Department of Economic Development, Racing Commission, LR 18:366 (April 1992), LR 21:

Paul D. Burgess  
Executive Director

9509#028

**DECLARATION OF EMERGENCY**

**Department of Economic Development  
Real Estate Commission**

Licencee's Compensation (LAC 46:LXVII.3103)

In accordance with the provisions of R.S. 49:953(B) of the Administrative Procedure Act, the Louisiana Real Estate Commission has adopted emergency revisions to the rules and regulations affecting the compensation of Louisiana real estate licensees. The purpose of this declaration of emergency is to emendate an action whereby the original language contained in R.S. 37:1446(B), scheduled to be renumarated, was inadvertently deleted.

The effective date of this emergency rule is August 17, 1995 for 120 days, or until the final rule takes effect through the normal promulgation process, whichever occurs first.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXVII. Real Estate**

**Chapter 31. Compensation**

**§3103. Sponsored Licensees**

Associate brokers and salespersons shall not accept a commission or valuable consideration for the performance of any act herein specified or for performing any act relating hereto, from any person, except their sponsoring or qualifying broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 21:

J. C. Willie  
Executive Director

509#040

**DECLARATION OF EMERGENCY**

**Board of Elementary and Secondary Education**

Bulletin 1706—Discipline

The Board of Elementary and Secondary Education exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and adopted as an emergency rule, an amendment to Section 459 (Discipline Procedures) of Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act as stated below:

Emergency adoption is based on the recommendation of legal counsel and the imminent peril to the public health, safety, and welfare of students and the need for adequate due process timelines to protect the rights of students and school personnel. Effective date of emergency rule is September 25, 1995.

**Section 459. Discipline Procedures**

\* \* \*

B. Procedures for Exclusion of Students with Disabilities and Students with Suspected Disabilities

\* \* \*

2. For exclusions of more than nine consecutive days, or when a pattern of exclusions has occurred, or upon the fourth suspension.

Delete the phrase: "or upon reaching the maximum number of unexcused absences due to suspensions."

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941-1958.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 21:

Carole Wallin  
Executive Director

9509#025

**DECLARATION OF EMERGENCY**

**Board of Elementary and Secondary Education**

Bulletin 1868—Personnel Manual (LAC 28:I.922)

The Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, Revised Bulletin 1868, BESE Personnel Manual. Revisions to the manual were developed as a result of federal and state mandates, board action, or reworded for clarification as a result of using the manual. Bulletin 1868 is being readopted as an emergency rule, effective September 27, 1995 in order to continue the policies until finalized as a rule.

Copies of this bulletin have been provided to all entities under the jurisdiction of the Board of Elementary and Secondary Education and listed below:

1. each technical institute and regional management center;
2. BESE's special schools - Louisiana School for the Deaf, Louisiana School for the Visually Impaired, Louisiana Special Education Center;
3. each site operated by Special School District Number 1;
4. LA Association of Educators and LA Federation of Teachers.

Bulletin 1868, BESE Personnel Manual may be seen in its entirety in the Office of the State Register located on the fifth floor of the Capitol Annex; in the Office of the State Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge or in the Office of Vocational Education; or in the office of Special School District Number 1 located in the State Department of Education.

Bulletin 1868 is referenced in the Louisiana Administrative Code, Title 28, and is amended as stated below:

**Title 28  
EDUCATION**

**Part I. Board of Elementary and Secondary Education  
Chapter 9. Bulletins, Regulations, and State Plans  
§922. Personnel Policies**

**A. Bulletin 1868**

1. Revised Bulletin 1868, Personnel Manual of the State Board of Elementary and Secondary Education is adopted by the board. Policies in this bulletin apply to personnel under the jurisdiction of the state board in the Board Special Schools; in the entities comprising Special School District Number 1; and in entities in the vocational-technical system, exclusive of the assistant superintendent for Vocational Education and related state department staff.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6, R.S. 17:7(10), R.S. 17:81.4, R.S. 17:1941-1956; R.S. 17:1993.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 16:297 (April 1990), amended LR 16:957 (November 1990), LR 21:

(It should be noted that the clause "exclusive of the central office staff" which appeared after Special School District Number 1 has been eliminated from the bulletin. The salary schedule for Technical Institutes has been deleted from the Bulletin.)

Carole Wallin  
Executive Director

9509#024

**DECLARATION OF EMERGENCY**

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

Control of Air Pollution from  
Outdoor Burning (LAC 33:III.1109) (AQ125E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the

authority of R.S. 30:2011, the assistant secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary because the current rule, LAC 33:III.1109, entitled "Control of Air Pollution from Outdoor Burning", is unenforceable. This emergency action is extremely important in order to protect the citizens of our state who suffer from respiratory problems. It is also important because smoke from open burning near public roadways could cause hazardous driving conditions.

The immediate impact is to make LAC 33:III.1109 enforceable, thus controlling the outdoor burning of waste and other combustible material.

This emergency rule is effective August 16, 1995, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. Adopted this fifteenth day of August, 1995.

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

**Chapter 11. Control of Emissions of Smoke  
§1109. Control of Air Pollution from Outdoor Burning**

**A. Purpose.** It is the purpose of this Section to control outdoor burning of waste or other combustible material.

\* \* \*

[See Prior Text in B-E]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 21:

Gustave Von Bodungen, P.E.  
Assistant Secretary

9509#046

**DECLARATION OF EMERGENCY**

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

Vehicle Inspection and Maintenance Program  
(LAC 33:III.Chapter 19)(AQ116E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary because of federal requirements established in the Clean Air Act Amendments (CAAA) of 1990 and the impact of the amendments upon the six-parish, Baton Rouge ozone-nonattainment area. It is necessary for the DEQ to adopt this emergency rule, LAC 33:III.Chapter 19, to comply with requirements of the CAAA of 1990 regarding implementation of a mandated enhanced vehicle inspection and maintenance (I/M) program and submittal of a State

Implementation Plan (SIP) revision for approval by the United States Environmental Protection Agency (EPA).

The DEQ submitted a SIP revision for the I/M program on November 15, 1993. The I/M SIP revision was deemed incomplete by the EPA on February 22, 1994. The CAAA allows states 18 months following a finding of incompleteness to submit a SIP revision which can be deemed complete. Failure to submit a complete SIP revision within this timeframe results in the mandatory imposition of sanctions in accordance with Section 179(a) of the CAAA. Adoption of this emergency rule is necessary to allow the DEQ to submit an I/M SIP revision which can be deemed complete and thus avoid the imposition of mandatory sanctions by EPA on August 22, 1995.

This action will have no immediate impact on the public. Vehicle inspections will not begin until 1999 and only after reauthorization by the Louisiana Legislature in 1997.

This emergency rule is effective on August 21, 1995, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever comes first. The rule is currently in the rulemaking process. Adopted this 15th day of August, 1995.

The full text of this emergency rule is available for inspection at the following DEQ locations from 8 a.m. until 5:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3945 North I-10 Service Road West, Metairie, LA 70002; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; and the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802, phone (504) 342-5015.

William A. Kucharski  
Secretary

509#047

## DECLARATION OF EMERGENCY

### Department of Health and Hospitals Board of Examiners for Speech Pathology and Audiology

#### Licensure Requirements; Duties; Supervision Requirements (LAC 46:LXXV.Chapter 9)

The Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology hereby declares the following emergency rules, effective August 15, 1995 for 120 days or until the adoption of a final rule, whichever occurs first.

In an effort to reflect an expanding scope of practice in speech-language pathology and at the same time address the personnel shortage which exists in the profession, Act 892 of the 1995 Regular Session both created new levels of licensure and reclassified existing levels. A portion of these rules deals specifically with the requirements of each level of licensure

and directly impacts professionals applying for a license. The speech-language pathology assistant license and provisional speech-language pathology assistant license were designed to license individuals who previously did not meet qualifications for licensure. With a nationwide personnel shortage in the field, particularly in the area of public school employment, this level of licensure will allow public school systems to employ these licensees and thereby meet federal guidelines that require services to children with speech, language, or hearing problems. Adoption of these rules under emergency status would insure that schools could employ these professionals at the beginning of this school year and thereby comply with federal mandates for provision of services.

Emergency adoption of the rules relating to the levels of licensure and the specific requirements for each would eliminate confusion among both the licensed professionals and the consumers of their services by delineating the qualifications and duties of each licensee. Adoption of these emergency rules would insure that services provided to the public are being offered only by individuals licensed and qualified to perform those services.

With respect to the rule regarding the dispensing of hearing aids, Act 892 of the 1995 Regular Session allows audiologists to dispense hearing aids under the provisions of this law rather than under the jurisdiction of the Louisiana Board for Hearing Aid Dealers, as was previously required. Since the qualifications for licensure under the two laws are vastly different, it is imperative that any confusion to the public and/or to the professionals of the state of Louisiana be avoided.

The Louisiana Board of Examiners for Speech Pathology and Audiology has a duty to inform its licensees and the public of the changes which have resulted from the passage of Act 892 of the 1995 Regular Session. Emergency adoption of these rules would enable the board to accomplish this task as expeditiously as possible.

In order to protect the public from being served by individuals who do not meet the qualifications for a specific level of licensure, and to lessen the personnel shortage in Louisiana through the employment of speech-language pathology and audiology professionals, and therefore avoid the imposition of federal sanctions, the board finds it necessary to adopt the following emergency rules under R.S. 49:953(B) of the Administrative Procedure Act.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXV. Speech Pathology and Audiology Chapter 9. Licensure Requirements; Duties and Supervision Requirements

#### §901. Audiology License and Provisional Audiology License

A. The following coursework requirements apply to applicants who began a master's program after January 1, 1994:

1. the applicant must submit transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 75 semester credit hours of coursework

which constitutes a well-integrated program that includes at least:

- a. six semester credit hours in biological/physical sciences and mathematics;
- b. six semester credit hours in behavioral and/or social sciences;
- c. fifteen semester credit hours in basic human communication processes to include the anatomic and physiologic bases, the physical and psychophysical bases, and the linguistic and psycholinguistic aspects.

2.a. thirty-six semester credit hours of professional coursework in audiology:

- i. six semester credit hours in hearing disorders and hearing evaluation;
- ii. six semester credit hours in habilitative/rehabilitative procedures;
- iii. six semester credit hours in speech-language pathology, not associated with hearing impairment.

b. thirty of the 36 semester credit hours must be in courses for which graduate credit was received; 21 of the 30 semester credit hours must be in the area of audiology;

c. a maximum of six academic semester credit hours associated with clinical practicum may be counted toward the minimum of 36 semester credit hours of professional coursework, but those hours may not be used to satisfy the minimum of six semester credit hours in hearing disorders/evaluation, or six semester credit hours in habilitative/rehabilitative procedures, or six semester credit hours in speech-language pathology, or the 21 graduate semester credit hours in the professional area for which the license is sought.

B. The following coursework requirements apply to applicants who began a master's program prior to January 1, 1994:

1. the applicant must submit transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 60 semester hours of coursework which constitutes a well-integrated program that includes at least twelve semester credit hours in basic human communication processes to include the anatomic and physiologic bases, the physical and psychophysical bases, and the linguistic and psycholinguistic aspects;

2.a. thirty semester credit hours of professional coursework in audiology\*:

- i. six semester credit hours in hearing disorders and hearing evaluation;
- ii. six semester credit hours in habilitative/rehabilitative procedures;
- iii. six semester credit hours in speech-language pathology, not associated with hearing impairment;

b. twenty-one of the 30 semester credit hours must be in courses for which graduate credit was received;

c. a maximum of six academic semester credit hours associated with clinical practicum may be counted toward the minimum of 30 semester credit hours of professional coursework, but those hours may not be used to satisfy the minimum of six semester credit hours in hearing disorders/evaluation, or six semester credit hours in

habilitative/rehabilitative procedures, or six semester credit hours in speech-language pathology, or the 21 graduate credits in the professional area for which the license is sought.

*\*If seeking licensure in both speech-language pathology and audiology, at least 15 graduate level semester hours in each area are required.*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2651 and 2659.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

### **§903. Hearing Aid Dispensing**

A. Audiologists who dispense hearing aids must meet the coursework and practicum requirements for dispensing as specified in Act 892 of the 1995 Regular Session and must register their intent to do so at the time of each license renewal.

1. Dispensing audiologists shall pay an initial registration fee of \$25 and an annual renewal fee of \$10 in addition to the fees charged for licensure renewal.

2. Dispensing audiologists shall affix an annual registration seal to the displayed audiology license.

B. Audiologists who hold a provisional audiology license must be supervised by a licensed, registered dispensing audiologist while completing the professional employment requirements for full licensure.

C. Audiologists who dispense must maintain annual calibration records on audiometric equipment.

D. Audiologists who dispense hearing aids must meet the minimum continuing education requirements for license renewal with at least three of the required 10 hours in areas specifically related to hearing aids and/or the dispensing of hearing aids.

E. Audiologists who dispense hearing aids must comply with the following guidelines:

1. audiologists shall conduct a pre-purchase evaluation that includes:

- a. a case history;
- b. an otoscopic examination;
- c. a basic audiological test battery, including:
  - i. pure tone air and bone conduction testing;
  - ii. speech reception threshold;
  - iii. word recognition testing;
  - iv. appropriate tolerance testing;
  - v. middle ear measurements when indicated.

2. audiologists must provide the consumer with a minimum 30-day trial period on all new hearing aids purchased;

3. audiologists must inform the consumer of the total cost of the hearing aid, including any fees for returning the aid at the end of the trial period;

4. audiologists shall conduct a post fitting evaluation that includes functional gain measurements and/or real ear measurements;

5. audiologists who engage in the fitting or selling of hearing aids shall deliver to each person supplied with a hearing aid, a bill of sale which shall contain the dispenser's signature, address and license number, together with a

description of the make, model and serial number of the hearing aid and the amount charged. The bill of sale shall also indicate whether the hearing aid is new, used, or reconditioned.

#### F. Individualized Program of Study

1. Equivalency for National Institute for Hearing Instruments Studies is defined as an individualized program of study that may include:

- a. hearing aid fitting courses sponsored by hearing aid manufacturers;
- b. university programs; or
- c. programs of independent study.

2. Any individualized program of study must be submitted to the board for pre-approval.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651, 2656 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

### §905. Speech-Language Pathology License and Provisional Speech-Language Pathology License

A. The following coursework requirements apply to applicants who began a master's program after January 1, 1994:

1. the applicant must submit transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 75 semester credit hours of coursework which constitutes a well-integrated program that includes at least:

- a. six semester credit hours in biological/physical sciences and mathematics;
- b. six semester credit hours in behavioral and/or social sciences;
- c. 15 semester credit hours in basic human communication processes to include the anatomic and physiologic bases, the physical and psychophysical bases, and the linguistic and psycholinguistic aspects;

2.a. 36 semester credit hours of professional coursework in speech-language pathology:

- i. six semester credit hours in speech disorders;
  - ii. six semester credit hours in language disorders;
  - iii. six semester credit hours in audiology;
- b. 30 of the 36 semester credit hours must be in courses for which graduate semester credit hours was received; 21 of the 30 semester hours must be in the area of speech-language pathology.

c. a maximum of six academic semester credit hours associated with clinical practicum may be counted toward the minimum of 36 semester credit hours of professional coursework, but those hours may not be used to satisfy the minimum of six semester credit hours in speech disorders, or six semester credit hours in language disorders, or six semester credit hours in audiology, or in the 21 graduate semester credit hours in the professional area for which the license is sought.

B. The following coursework requirements apply to applicants who began a master's program prior to January 1, 1994.

1. the applicant must submit transcripts from one or more regionally accredited colleges or universities evidencing completion of at least 60 semester credit hours of coursework which constitutes a well-integrated program that includes at least 12 semester credit hours in basic human communication processes to include the anatomic and physiologic bases, the physical and psychophysical bases, and the linguistic and psycholinguistic aspects

2.a. 30 semester credit hours of professional coursework in speech-language pathology\*:

- i. six semester credit hours in speech disorders;
- ii. six semester credit hours in language disorders;
- iii. six semester credit hours in audiology.

b. 21 of the 30 semester credit hours must be in courses for which graduate credit was received.

c. a maximum of six academic semester credit hours associated with clinical practicum may be counted toward the minimum of 36 semester credit hours of professional coursework, but those hours may not be used to satisfy the minimum of six semester credit hours in speech disorders, or six semester credit hours in language disorders, or six semester credit hours in audiology, or in the 21 graduate semester credit hours in the professional area for which the license is sought.

*\*If seeking licensure in both speech-language pathology and audiology, at least 15 graduate level semester hours in each area are required.*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

### §907. Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant

A. Bachelor's degree should include the following core coursework. A total of 39 hours must be obtained in the following areas. Thirty-six of these hours are from required courses. (Required courses are followed by <sup>R</sup>.)

#### B. Basic Requirements

1. educational and/or psychological tests and measurements: three semester hours<sup>R</sup>;
2. Psychology/Sociology/Multicultural Studies (some combination): six semester hours<sup>R</sup>.

#### C. Basic Professional Courses

1. American phonetics: three semester hours<sup>R</sup>;
2. anatomy and physiology of the speech and hearing mechanism: three semester hours<sup>R</sup>;
3. normal speech and language acquisition (to include cultural and regional variations): three semester hours<sup>R</sup>;
4. clinical methods and procedures in speech-language-hearing therapy: three semester hours<sup>R</sup>.

#### D. Speech and Language Disorders

1. survey of exceptionalities/introduction to communication disorders: three semester hours<sup>R</sup>;
2. articulation disorders: three semester hours<sup>R</sup>;
3. language disorders: three semester hours<sup>R</sup>;
4. disorders of rhythm (to include stuttering): three semester hours;

5. voice disorders: three semester hours;
6. diagnostic processes in communication disorders: three semester hours;
7. clinical practicum with speech-language disorders: three semester hours<sup>R</sup>.

*(additional credit may be obtained as an elective)*

**E. Hearing and Hearing Disorders**

1. introduction to audiology: three semester hours<sup>R</sup>;
2. aural rehabilitation: three semester hours;
3. introduction to education of the hearing impaired: three semester hours;

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

**§909. Master's Equivalency Requirement: Speech-Language Pathology, Provisional Speech-Language Pathology, Audiology or Provisional Audiology License**

Individuals who do not possess a master's degree in either speech-language pathology or audiology but wish to obtain a license through the equivalency process must meet the coursework, practicum and examination requirements for the area in which licensure is sought as defined in the board's rules, §§901, 905, 911 and 913.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

**§911. Clinical Practicum Hour Requirements**

An individual must submit official documentation from a regionally-accredited educational institution or its cooperating programs, verifying supervised clinical practicum hours as follows:

1. Speech-Language Pathology and Provisional Speech-Language Pathology License:
  - a. 300 clinical practicum hours if master's program began prior to January 1, 1994;
  - b. 375 clinical practicum hours if master's program began after January 1, 1994.
2. Audiology and Provisional Audiology License:
  - a. 300 clinical practicum hours if master's program began prior to January 1, 1994;
  - b. 375 clinical practicum hours if master's program began after January 1, 1994.
3. Speech-Language Pathology Assistant License:
  - a. 225 clinical practicum hours are required, the first 100 of which must have been obtained through a regionally accredited educational institution or its cooperating programs;
  - b. of the 100 hours obtained through a regionally-accredited educational institution, 75 hours must be obtained with direct client contact, and the remaining 25 hours may be obtained through observation of testing and therapy;
  - c. it is strongly recommended that the direct client contact hours be obtained in at least two practicum sites with one site being a public school setting. The hours shall be obtained in the following categories:

- i. minimum of 20 hours in articulation disorders;
- ii. minimum of 20 hours in language disorders;
- iii. the remaining 35 hours may be obtained in the areas of articulation disorders, language disorders or distributed among other disorders;

d. the remaining 125 hours may be obtained on-the-job and/or through a regionally-accredited educational institution or its cooperating programs.

**4. Provisional Speech-Language Pathology Assistant License:**

a. a minimum of 100 clinical practicum hours which have been obtained through a regionally accredited educational institution or its cooperating programs is required;

b. 75 hours must be obtained with direct client contact, and the remaining 25 hours may be obtained through observation of testing and therapy;

c. it is strongly recommended that the direct client contact hours be obtained in at least two practicum sites with one site being a public school setting. The hours shall be obtained in the following categories:

- i. minimum of 20 hours in articulation disorders;
- ii. minimum of 20 hours in language disorders;
- iii. the remaining 35 hours may be obtained in the areas of articulation disorders, language disorders or distributed among other disorders;

d. the additional 125 clinical practicum hours required for the speech-language pathology assistant license must be obtained within three years of the date of issuance of the provisional assistant license and may be obtained by completing the remaining hours on-the-job and/or through a regionally accredited educational institution or its cooperating programs. Clock hours obtained after the date of original issuance of the provisional speech-language pathology assistant license shall be distributed as follows:

- i. minimum of 50 hours in articulation;
- ii. minimum of 50 hours in language disorders;
- iii. the remaining 25 hours may be obtained in the areas of articulation disorders, language disorders or distributed among other disorders.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

**§913. Examination Requirement: Speech-Language Pathology License, Provisional Speech-Language Pathology License, Audiology License, Provisional Audiology License**

A. LBESPA recognizes only the Educational Testing Service's specialty area examinations for speech-language pathology and audiology as the licensure examination for speech-language pathology and/or audiology.

B. The passing score for the speech-language pathology area examination is a minimum score of 600.

C. The passing score for the audiology area examination is a minimum score of 600.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

**§915. Supervision Requirements for Provisional Speech-Language Pathologist, Provisional Audiologist and Restricted Licensee**

A. Licensees may only be supervised by a speech-language pathologist or audiologist licensed in accordance with Act 892 of the 1995 Regular Session, who holds a current, unsuspended, unrevoked license. No licensee may serve as a supervisor while on probationary status.

B. Supervision may be provided only in the area in which the supervisor is licensed.

C. The "Supervision Requirements of Restricted Licensees", §113 of Chapter 1, adopted by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 14: 705 (October 1988), remains in effect for individuals holding the Restricted License. The same rules apply to individuals issued a Provisional Speech-Language Pathology License and/or Provisional Audiology License after August 15, 1995, in accordance with Act 892 of the 1995 Regular Session.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

**§917. Supervision Requirements for Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant**

A. The supervision requirements specified in these guidelines are minimum requirements. It is the responsibility of the speech-language pathologist to design and provide a supervision system that protects patient/client care and maintains the highest possible standards of quality.

B. Treatment for the patient/client served remains the responsibility of the supervisor. Therefore, the level of supervision required is considered the minimum level necessary for the supervising speech-language pathologist to maintain direct contact with the patient/client.

**C. Definitions**

*Assistant Licensee*—an individual who meets the requirements of R. S. 37:2659(D) and works under the direct supervision of a licensed speech-language pathologist and performs only those duties specified in the rules and regulations established by the board.

*Direct Supervision*—on-site, in-view observation and guidance as a clinical activity is performed as well as the utilization of alternative methods to obtain knowledge of a supervisee's clinical work. These may include conferences, audio and videotape recordings, review of written records, offerings and discussions with other persons who have participated in the assistant licensee's training.

*Provisional Assistant Licensee*—an individual who meets the requirements of R. S. 37:2659(E) and works under the direct supervision of a licensed speech-language pathologist and performs only those duties specified in the rules and regulations established by the board. This person has

completed a minimum of 100 of 225 supervised clinical practicum hours and is working to complete the remaining hours on-the-job and/or through a regionally accredited educational institution or its cooperating programs.

*Supervised On-the-Job Training*—means only those hours which have been supervised on-site, in view and documented on the forms provided by LBESPA.

**D. Supervision Guidelines**

**1. Requirements for the Provisional Speech-Language Pathology Assistant License**

a. a minimum of three clock hours of on-site, in-view supervision must be completed each week for each licensee;

b. a minimum of two clock hours of alternative supervision methods must be completed each week for each licensee. These methods should include, but are not limited to:

i. specifying protocols for speech-language screenings and assessments conducted by the provisional assistant licensee;

ii. specifying protocols for hearing screenings conducted by the provisional assistant licensee;

iii. approving treatment plans or protocols and documenting this approval;

iv. monitoring patient/client progress toward meeting established objectives;

v. monitoring scheduling, charting and data collection;

vi. directing maintenance of equipment;

vii. directing research projects, in-service training and public relations programs;

viii. conducting telephone conferences.

**2. Requirements for the Speech-Language Pathology Assistant License**

a. a minimum of one clock hour of on-site, in-view supervision must be completed each week for each licensee;

b. a minimum of one clock hour of alternative supervision methods must be completed each week for each licensee. These methods should include, but are not limited to:

i. specifying protocols for speech-language screenings and assessments conducted by the assistant licensee;

ii. specifying protocols for hearing screenings conducted by the assistant licensee;

iii. approving treatment plans or protocols and documenting this approval;

iv. monitoring patient/client progress toward meeting established objectives;

v. monitoring scheduling, charting and data collection;

v. directing maintenance of equipment;

vii. directing research projects, in-service training and public relations programs;

viii. conducting telephone conferences.

E. Assistant licensees and provisional assistant licensees shall be supervised by only a licensed speech-language pathologist.

F. Although more than one speech-language pathologist

may provide supervision of an assistant licensee and provisional assistant licensee, at no time may a licensed speech-language pathologist supervise or be listed as a supervisor for more than three assistant or provisional assistant licensees. When multiple supervisors are used, the supervisors are encouraged to coordinate and communicate with each other.

G. Documentation of supervision must be submitted annually at the time of license renewal on the form provided by the board.

H. The supervising speech-language pathologist must be readily available for consultation with the assistant licensee and the provisional assistant licensee. This includes personal contact, telephone, pager, or other means of communication.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

**§919. Duties: Speech-Language Pathology Assistant License and Provisional Speech-Language Pathology Assistant License**

A. Duties for Speech-Language Pathology Assistant or Provisional Speech-Language Pathology Assistant

1. All duties performed by the speech-language pathology assistant licensee or provisional speech-language pathology assistant licensee shall be supervised in accordance with the rules and regulations specified by the board.

2. While the assistant licensee or provisional speech-language pathology assistant may work with disorders of articulation, language, voice or fluency, the licensee must possess the necessary knowledge base and skills to provide treatment in that specific area. Provided that the training, supervision, documentation, and planning are appropriate, the following tasks may be assigned to a speech-language pathology assistant licensee or provisional speech-language pathology assistant:

a. conduct speech-language screenings and assessments without interpretation, following specified protocols as approved by the supervising speech-language pathologist. All screening and assessment reports must be co-signed by the supervising speech-language pathologist;

b. perform hearing screenings limited to a pass/fail determination for the purpose of initial identification of disorders, following specified protocols as approved by the supervising speech-language pathologist;

c. provide direct treatment which is within the level of training and experience as determined by the supervising speech-language pathologist to a caseload of patients/clients who demonstrate communication disorders. Supervision of treatment shall be in accordance with the rules and regulations specified by the board;

d. follow treatment plans or protocols as approved by the supervising speech-language pathologist. Documentation of the supervising speech-language pathologist's approval must be kept on file prior to implementation of treatment plans or protocols;

e. document patient/client progress toward meeting

established objectives as stated in the treatment plan, and report this information to the supervising speech-language pathologist;

f. schedule activities, prepare charts, records, graphs, or otherwise display data;

g. perform checks and maintenance of equipment;

h. participate with the supervising speech-language pathologist in parent conferences, case conferences, interdisciplinary team conferences, research projects, inservice training, and public relations programs, if s/he has not completed the required 225 practicum hours;

i. participate in parent conferences, case conferences, interdisciplinary team conferences, research projects, inservice training, and public relations programs, provided the licensee has completed the 225 practicum hours.

B. Duties Outside the Scope of Practice of a Speech-Language Pathology Assistant or Provisional Speech-Language Pathology Assistant. The speech-language pathology assistant licensee and provisional speech-language pathology assistant shall not:

1. perform clinical tasks without the knowledge and approval of the supervising speech-language pathologist;

2. interpret test results;

3. work with a communication or related disorder or medical condition or age group unless s/he has had sufficient coursework and sufficient supervised practicum in that area;

4. provide patient/client or family counseling;

5. select and/or discharge patients/clients for services without the approval of the supervising speech-language pathologist;

6. disclose clinical or confidential information either orally or in writing to anyone not designated by the supervising speech-language pathologist and without the authorization of the client/patient or their designee;

7. make referrals for additional services without the approval of the supervising speech-language pathologist.

C. If the speech-language pathology assistant or provisional speech-language pathology assistant operates outside the stipulated scope of practice, that person and the supervising speech-language pathologist shall be reported to LBESPA.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2651 and 2659.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech Pathology and Audiology, LR 21:

Glenn M. Waguespack  
Chairperson

9509#007



## DECLARATION OF EMERGENCY

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

### Case Management Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medicaid Program as authorized by R.S. 46:153 and under the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. This emergency rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule.

The Bureau of Health Services Financing established optional targeted case management services under the Medicaid Program which includes the mentally retarded developmentally/disabled population by rule on June 20, 1989 which was published in the *Louisiana Register* on June 20, 1989, Volume 15, No. 6. This rule was subsequently revised on May 20, 1993 and published in the May 20, 1993 issue of the *Louisiana Register*, Volume 19, No. 5. The bureau adopted on July 22, 1994 and August 13, 1994 major revisions to the case management services regulations which included identification of all targeted population groups and changes for the provision of these services to the mentally retarded/developmentally disabled or to infants and toddlers with special needs. These revisions were published in the July 20, 1994 and August 20, 1994 *Louisiana Register* Volumes 20 and 21, No. 8 and 9 and have been maintained in force through subsequent emergency rulemaking. The department determined that expenditures for case management services for the mentally retarded developmentally/disabled population has doubled during the past year and therefore should be subject to prior authorization including the recipient's eligibility for case management services as a member of the target populations. This requirement is considered essential to control expenditures. Therefore, the department adopted an emergency rule making these services subject to prior authorization in order for providers to receive Medicaid reimbursement effective June 1, 1995. The following emergency rule is being adopted to avoid a budget deficit in the Medical Assistance Program.

#### Emergency Rule

Effective September 28, 1995 the Bureau of Health Services Financing adopts the following regulations governing the provider participation and Medicaid reimbursement of all case management services for the populations of mentally retarded/developmentally disabled or infants and toddlers with special needs. These regulations are in addition to current requirements for case management services and are applicable to case management services delivered under the State Plan or under an approved waiver from the Health Care Financing Administration.

## Optional Targeted Case Management Services for the Mentally Retarded/Developmentally Disabled or Infants and Toddlers with Special Needs Populations

- A. Candidates for case management services must be Medicaid eligible.
- B. Medicaid eligibles must be certified as a member of the targeted populations by the Medicaid agency or its designee.
- C. The case management service plan is subject to prior authorization by the Medicaid agency or its designee.
- D. Providers of case management services are required to participate in provider training and technical assistance as required by the Medicaid agency or its designee.

Rose V. Forrest  
Secretary

9509#081

## DECLARATION OF EMERGENCY

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

### Durable Medical Equipment

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriations Act which states: "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, and utilization review, and other measures as allowed federal law." This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the minimum period allowed under the Administrative Procedure Act or adoption of the rule whichever occurs first.

The Bureau of Health Services Financing adopted a dual reimbursement methodology on April 20, 1993, Volume 19, Number 4 for the Durable Medical Equipment Program. This program includes prosthetic devices, artificial eyes, braces, medical appliances, equipment, and supplies. Effective for dates of service July 7, 1995 and after, the Bureau of Health Services Financing revised the flat fee component of the reimbursement methodology for durable medical equipment, for Medicaid only recipients, by establishing flat fees at a rate of 80 percent of the Medicare durable medical equipment fee schedule or at a rate of 80 percent of the lowest cost at which

the item is widely available. The department is now amending the provisions of that emergency rule by allowing for an exception to the 80 percent of the Medicare DME fee schedule and for 80 percent of the lowest cost at which the item is widely available for the specified HCPC procedure codes. Flat fees for HCPC procedure codes A4622, A4625, B4150 through B4156, E0450, E0607, E0608, E0630, XX030 through XX072, and Z0451 through Z0500 will be established at a rate of 100 percent of the Medicare durable medical equipment fee schedule amounts or at a rate of 100 percent of the lowest cost at which a needed item has been determined to be widely available. This action is to remain in compliance with 42 CFR, 447.204 mandating that the Medicaid Program ensure the availability of covered services.

It is estimated that this rule change will reduce by \$794,417 the anticipated expenditure reduction from the July 7, 1995 emergency rule for state fiscal 1995-1996. The revised estimated reduction for this program for state fiscal 1995-1996 due to adoption of this revision is \$3,005,583. In addition, the department is revising the method of reimbursement for certain supplies for wound care and dressings, and other medically necessary supply items exclusively designated for home health care. These home health care supplies will now be reimbursed through the Durable Medical Equipment Program, instead of the Home Health Care Program, through which they were formerly reimbursed. Durable medical equipment providers may bill for these home health care items only if they are used by a home health agency for services in the home and only if prior authorization through the established prior authorization mechanism for durable medical equipment. Diapers and blue pads are not reimbursable supply items under the Durable Medical Equipment Program.

#### **Emergency Rule**

Effective for dates of service August 18, 1995 and after, the Department of Health and Hospitals, Bureau of Health Services Financing is hereby amending the July 7, 1995 emergency rule (*Louisiana Register*, Volume 21, Number 7) as follows.

1. Flat fees for HCPC procedure codes A4622, A4625, B4150 through B4156, E0450, E0607, E0608, E0630, XX030 through XX072, and Z0451 through Z0500 are to be established at a rate of 100 percent of the Medicare durable medical equipment fee schedule amounts or at a rate of 100 percent of the lowest cost at which a needed item has been determined to be widely available.
2. Wound care supplies and dressings, and other medically necessary supply items exclusively designated for home health care are reimbursable under the Durable Medical Equipment Program, and are not reimbursable under the Home Health Program. Durable medical equipment providers must obtain prior authorization through the prior authorization process required under the Durable Medical Equipment Program in order to provide and be reimbursed for these home health care supplies. These supplies must be used by home health agencies in the home.
3. Diapers and blue pads are not reimbursable supply items under the Durable Medical Equipment Program.

Interested persons may submit written comments to: Thomas

D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this emergency rule. A copy of this emergency rule is available at Parish Medicaid Offices for review by interested parties.

Rose V. Forrest  
Secretary

9509#031

## **DECLARATION OF EMERGENCY**

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

Home Health Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing previously reimbursed home health services at interim payment rates established for skilled nursing visits, physical therapy, home health aide visits with annual cost settlement. The cost of covered nonroutine supplies was reimbursed at an interim rate assigned by Medicare annually. The annual cost settlement was 100 percent of allowable cost for covered nonroutine supplies. Effective July 7, 1995 the bureau revised the reimbursement to home health agencies by establishing maximum rates for interim and cost settlement payment amounts established at levels not to exceed the following limits: 1) skilled nursing visits (procedure code X9900) - \$64.54; 2) health aide visits (procedure code X9901) - \$22.81; and 3) physical therapy (procedure code X9926) - \$70.46. Also, the bureau reimbursed the home health agency at an interim rate of 80 percent of allowable billed charges for nonroutine covered supplies (procedure code X9925). Final reimbursement for covered nonroutine supplies was at 80 percent of allowable costs through the cost settlement process except for diapers which were not reimbursable under the supply cost category

for home health services. Effective August 18, 1995 the bureau is repealing all prior rules governing the reimbursement of home health services and is adopting the following emergency rule which includes prospective maximum rates, increased rate for the skilled nursing and the health aide visits; abolishes the interim rate and cost settlement process; and establishes the provision of medically necessary supplies for the delivery of a home health service under the prior authorization mechanism of the Durable Medical Equipment Program. This action is being taken to avoid a budget deficit in the medical assistance programs. It is estimated that this action will reduce expenditures for home health services by approximately \$12,781,169 for state fiscal 1995-1996.

#### **Emergency Rule**

Effective for dates of service of August 18, 1995 and after, the Department of Health and Hospitals, Bureau of Health Services Financing repeals all prior rules governing the reimbursement of home health services and adopts the following provisions to govern the reimbursement of home health services under the Medicaid Program.

1. The bureau reimburses prospectively home health agencies for allowable services by establishing the following rates: 1) skilled nursing visits (procedure code X9900) - \$68.65; 2) health aide visits (procedure code X9901) - \$24.38; and 3) physical therapy (procedure code X9926) - \$70.46.

2. The Home Health Agency is required to instruct the families on non-complex physical therapy tasks when feasible.

3. The bureau reimburses medically necessary supplies through the Durable Medical Equipment Program which requires prior authorization for the item. Items may be authorized to an existing durable medical equipment provider or to home health agencies which enroll as durable medical equipment providers.

a) Diapers and blue pads are not reimbursable as a durable medical equipment item.

b) Certain supplies for wound care and dressing will be covered under the Durable Medical Equipment Program but will be authorized exclusively for the use of home health agencies when delivering a home health service.

Interested persons may submit written comments to: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding his emergency rule. A copy of this rule is available in the Medicaid parish offices for review by interested parties.

Rose V. Forrest  
Secretary

509#030

## **DECLARATION OF EMERGENCY**

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

### **Mental Health Rehabilitation**

The Department of Health and Hospitals, Office of Secretary, Bureau of Health Services Financing, has adopted the following rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for 120 days or until adoption of the rule under the Administrative Procedure Act, whichever occurs first.

The Bureau of Health Services Financing adopted a rule to revise certain provisions of the Mental Health Rehabilitation Program in order to incorporate the program guidelines and interpretations of the Health Care Financing Administration. This rule was adopted on April 20, 1993 and published in the *Louisiana Register*, Volume 19, Number 4. A subsequent rule established service limits for certain mental health rehabilitation services and revised the definition of treatment integration to ensure the inclusion of appropriate therapeutic principles and skills for this service component and to generate cost savings in the program. This rule was published by reference in the *Louisiana Register* on December 20, 1994 Volume 20, Number 12. The Health Care Financing Administration has provided further program guidance through the identification of an unallowable charge for which the bureau has been providing reimbursement under the Medicaid Program. This unallowable charge is the collateral contact service identified in the above-cited December 20, 1994 rule on limits for mental health rehabilitation services. The Health Care Financing Administration has determined that this activity is an integral part of the development and updating of the plan of care and the provision of treatment integration and it is not a distinct reimbursable service under the Medicaid Program. Therefore, the bureau adopted an emergency rule to discontinue Medicaid reimbursement for this activity effective May 1, 1995, *Louisiana Register*, Volume 21, Number 5. A notice of intent was published in the June, 1995 issue of the *Louisiana Register*, Volume 21, Number 6. The following emergency rule is adopted in order to avoid a potential disallowance and fiscal crisis in the Medicaid Program.

#### **Emergency Rule**

Effective August 28, 1995 the Bureau of Health Services Financing will not reimburse for collateral consultations in the Mental Health Rehabilitation Program.

Rose V. Forrest  
Secretary

9509#020

## DECLARATION OF EMERGENCY

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

### Nursing Facility Services Reimbursement

The Department of Health and Hospitals, Office of Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and shall remain in effect for the maximum period allowed by the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Bureau of Health Services Financing established the current prospective reimbursement methodology for private nursing facility services effective August 1, 1984 by rule as published in the June 20, 1994 issue of the *Louisiana Register* (Volume 10, Number 6, pages 467-468). This methodology utilizes a base rate determined according to a uniform recipient Level of Care designation (Intermediate Care-I, Intermediate Care-II and Skilled Nursing) which is adjusted by specific economic indices. Subsequently, the provisions of nursing home reform as mandated by the Omnibus Budget Reconciliation Act of 1987 were established by rule in the December 20, 1990 issue of the *Louisiana Register* (Volume 16, Number 12, page 1061). In addition, subsequent rules have been adopted for specialized nursing facility Levels of Care for specific patient types (SN-Infectious Disease, SN-Technology Dependent Care and SN-Neurological Rehabilitation Treatment Program).

The following emergency rule repeals the August 1, 1984 rule and adopts provisions to govern private nursing facility services which re-establish a prospective cost-related methodology based on specific cost categories for each Level of Care and specifies the inflationary adjustment mechanism or recalculation period. Within this framework the following changes are included: the new categories consist of three direct and five indirect resident care costs and the incentive factor; the annual wage for nonsupervisory service workers is deleted as a single component but the following categories where these and other costs are incorporated, i.e., housekeeping/linen/laundry, other dietary, plant operation and maintenance, administrative and general are established; nursing services cost are limited to one category. This revision of the methodology represents an improved and more efficient manner for determining cost factors reimbursable under the Medicaid Program. The calculation of the incentive factor remains at five percent but excludes building costs from the computation. The percentiles to be utilized are changed from the single current 60th percentile to the following percentiles: direct resident care costs (80th); indirect resident care costs are at the 60th percentile except housekeeping/linen/laundry (70th). The required nursing service hours remain at the current levels: the intermediate care levels one and two remain

at 2.35, and the skilled nursing level continues to be 2.6.

The above changes were implemented through emergency rule making and published in the *Louisiana Register* January, 1995 and May, 1995 (Volume 21, Numbers 1 and 5). Implementation of the above changes through emergency rulemaking is necessary to ensure that Medicaid payment rates for nursing facility services reflect current economic conditions and provide reimbursement for the allowable costs for each Level of Care in a private facility which is economically and efficiently operated. Further, these changes are necessary to avoid possible penalties or sanctions from the federal government.

The current rules for specialized levels of nursing facility care, i.e., Technology Dependent Care, Infectious Disease, and the Neurological Rehabilitation Treatment Program are not revised in the following rule.

#### Emergency Rule

Effective August 29, 1995, the Bureau of Health Services Financing repeals the August 1, 1984 rule governing reimbursement for private nursing facility services and adopts the following methodology and provisions to govern reimbursement of these services for Medicaid recipients. Reimbursement for the nursing home reform requirements of the Omnibus Budget Reconciliation Act of 1987 are incorporated in the following methodology and provisions. Costs are determined based upon audited and or desk reviewed cost reports to calculate the new base rate components.

#### REIMBURSEMENT METHODOLOGY FOR PRIVATE NURSING FACILITIES

##### A. General Provisions

1. The bureau has designated a system of prospective payment amounts based on recipient Levels of Care: Intermediate Care I (IC-I); Intermediate Care II (IC-II); Skilled Nursing (SN); Skilled Nursing/Infectious Disease (SN/ID) and Skilled Nursing/Technology Dependent Care (SN/TDC); Neurological Rehabilitation Treatment Program (NRTP), which includes Rehabilitation Services; and Complex Care Services.

2. Facilities may furnish services to patients of more than one classification of care. Every nursing facility provider must meet the nursing home reform requirements of OBRA 1987.

3. Determination of Limits. Cost limits will be established based on a statistical analysis of industry data to assure that total payments under the plan will not exceed Title XVIII reimbursement. The ceiling limitation on reasonable cost will be set at a level the state determines adequate to reimburse an efficiently operating facility. Incentive for efficient operation will be allowed as a profit opportunity for providers who provide required services at a cost below the industry average.

4. Maximum Rate. The state will make payment at the statewide rate for the patient Level of Care provided or the provider's customary charge to the public, whichever is lower.

##### B. Cost Determination

###### 1. Definitions

###### a. Consumer Price Indices

*CPI-Administrative and General*—the Consumer Price Index - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Housekeeping/Linen/Laundry*—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Nursing Services*—the Consumer Price Index for All Urban Consumers - South Region (Medical Care Services line) as published by the United States Department of Labor.

*CPI-Other Dietary*—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Plant Operation and Maintenance*—the Consumer Price Index - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Raw Food*—the Consumer Price Index for All Urban Consumers - South Region (Food line) as published by the United States Department of Labor.

*CPI-Recreation*—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

b. Economic Adjustment Factors. Each of the above economic adjustment factors is computed by dividing the value of the corresponding index for December of the year preceding the rate year by the value of the index one year earlier (December of the second preceding year).

c. Rate Year. The rate year is the one-year period from July 1 through June 30 of the next calendar year during which a particular set of rates is in effect. It corresponds to a state fiscal year.

d. Base Rate. The base rate is the rate calculated in accordance with B.3.b.

e. Base Rate Components. The base rate is the summation of the components shown in Table I. Each base rate component is intended to reimburse for the costs indicated by its name.

2. Table I. Base Rate Components

A	B	C
Preceding Rate Year Base Rate Component	Economic Adjustment Factor	New Base Rate Component
<b>DIRECT RESIDENT CARE COSTS:</b>		
Nursing Services (NSCC)	CPI - Medical Care Services	New NSCC
Raw Food (RFCC)	CPI - Food	New RFCC
Recreational (RCC)	CPI - All Items	New RCC
<b>INDIRECT RESIDENT CARE COSTS:</b>		
Housekeeping/Linen/Laundry (HLLCC)	CPI- All Items	New HLLCC
Other Dietary (ODCC)	CPI - All Items	New ODCC
Plant Operation & Maintenance (POMCC)	CPI - All Items	New POMCC
Administrative & General (AGCC)	CPI - All Items	New AGCC
Building Costs <sup>1</sup> (BCC)	Recompute annually	New BCC
Incentive Factor <sup>2</sup> (IF)	Recompute annually	NEW IF

<sup>1</sup> The base rate is established computing an average fair rental value on nursing home beds as follows:

Step 1. Base Value of a Nursing Home Bed. The base value of a nursing facility bed is determined by the median value of the cost of a nursing home bed, adjusted for Louisiana, as published in the *Building Construction Cost Data* by R.S. Means for the previous rate year and then adjusted for occupancy. The adjustment for Louisiana is computed by multiplying the median value by the simple average of the adjustment factors listed for Louisiana metropolitan areas. This result is then divided by a statewide occupancy factor based on the LTC2 for the third quarter of the preceding calendar year.

Step 2. Rental Value. The base value as computed above is multiplied by 150% of the 30 year Treasury Bill Rate as of December 31, 1993. The result of this computation is then converted to a daily rental value rate.

<sup>2</sup> The Incentive Factor component is computed based on 5% of the sum of the base rate components excluding the Building Cost Component.

3. Base Rate Determination and Percentile Levels. Rate determination is made according to a uniform recipient Level of Care rate which is adjusted annually from the base rate using the economic indices specified in the plan. In all calculations, the base rate and the base rate components will be rounded to the nearest one cent (two decimal places) and the Economic Adjustment Factors will be rounded to four decimal places.

a. Determination of Inflation Adjustment Factor. The determination of the inflation adjustment factor is based on the Consumer Price Index (CPI) as described in Section B.1.b.

b. Calculation of Base Rate. Separate daily rates will be calculated for each recipient Level of Care (IC-I, IC-II, and SN). The rate for each Level of Care will be set at an amount which the state determines is reasonable to reimburse adequately in full the allowable cost of providing care in a provider facility that is economically and efficiently operated. The rate for each Level of Care will be recalculated each year and will be effective for July services. The rate for each Level of Care shall be calculated by multiplying each specific rate component by the corresponding economic adjustment factor as specified in Table I. The nursing services component of the base rate differs by the Level of Care as a result of the minimum number of nursing hours required for the Level of Care as mandated by the Standards for Payment for Nursing Facility Services as follows intermediate care levels one and two 2.35 and skilled nursing 2.6.

c. The following percentiles are used in calculating the base rate:

direct resident care costs	80th
housekeeping/linen/laundry	70th
other indirect resident care costs exclusive of building costs and incentive factor	60th

A percentile factor is not applicable to the building costs and incentive component.

d. Base Value of a Nursing Facility Bed. The base value of a nursing facility bed is determined by the median value of the cost of a nursing home bed, adjusted for Louisiana, as published in the *Building Construction Cost Data* by R.S. Means for the previous rate year and then adjusted for occupancy. The adjustment for Louisiana is computed by multiplying the median value by the simple average of the adjustment factors listed for Louisiana metropolitan areas. This result is then divided by statewide occupancy factor based on the LTC2 for the third quarter of the preceding calendar year.

e. Rental Value. The base value as computed above is multiplied by 150 percent of the 30-year Treasury Bill Rate as of December 31, 1993. The result of this computation is then converted to a daily rental value rate.

f. Incentive Factor. The incentive factor component is computed based on five percent of the sum of the base rate components excluding the Building Cost Component.

g. Annualization

i. Base Rate Components. After formal adoption of the new rate, the components computed above will become the base rate components used in calculating the next year's new rate, unless they are adjusted as provided in Section B.4 and B.5.

ii. New Base Rate Components. The base rate components are adjusted annually (each rate year) by the economic adjustment factors as listed in Table I. This computation is performed by multiplying the preceding year base rate component (Table I, Column A) multiplied by the applicable economic adjustment factor (Table I, Column B). The product becomes the new base rate component. The building cost component and the return on equity factor are

recomputed annually as described in the footnotes to Table I.

4. Interim Adjustment to Rates. If an unanticipated change in conditions occurs which affects the cost of a Level of Care of at least 50 percent of the enrolled nursing homes providing that Level of Care by an average of five percent or more, the rate may be changed. The Bureau of Health Services Financing will determine whether or not the rates should be changed when requested to do so by 10 percent or more of the enrolled nursing homes, or an organization representing at least 10 percent of the enrolled nursing homes providing the Level of Care for which the rate change is sought. The burden of proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. In computing the costs, all capital expenditures will be converted to interest and depreciation. The Bureau of Health Services Financing, however, may initiate a rate change without a request to do so. Changes to the rates may be one of two types:

a. temporary adjustments; or

b. base rate adjustments as described below:

i. Temporary Adjustment. Temporary adjustments do not affect the base rate used to calculate new rates.

(a). Changes that will be reflected in the economic indices. Temporary adjustments may be made when changes which will eventually be reflected in the economic Indices occur after the end of the period covered by the index, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

(b). Lump Sum Adjustments. Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay. Such adjustments shall be subject to BHSF review and approval of costs prior to reimbursement. These changes are usually specific to *Federal Register* changes or "Standards for Payment Changes" which result in a significant one time cost impact on the facility. In the event of an adjustment, the providers will be responsible for submitting to the bureau documentation to support the need for lump sum adjustment and related cost data upon which the bureau can calculate reimbursement.

ii. Base Rate Adjustment. A base rate adjustment will result in a new base rate component or a new base rate component value which will be used to calculate the new rate for the next year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

C. Filing of Cost Reports

1. Providers of nursing home services under Title XIX are required to file annual cost reports for evaluation for each patient Level of Care for which services were rendered during the year. A chart of accounts and an accounting system on the accrual basis are used in the evaluation process.

2. The bureau's personnel or its contractual representative will perform desk reviews of the cost reports within six months of the date of submittal. In addition to the desk review, a representative number of the facilities are subject to a full-scope, on-site audit annually.

3. Cost reports will be compared by the Bureau of Health Services Financing to the rates calculated by this methodology at least every three years to insure that the rates remain reasonably related to costs. When indicated by such comparison, base rate component and the overall base rate will be adjusted to reflect cost experience.

a. Initial Reporting. The initial cost report submitted by Title XIX providers of long term care services must be based on the most recent fiscal year end. The report must contain costs for the 12 month fiscal year.

b. Subsequent Reports. Cost reports shall be submitted annually by each provider within 90 days of the close of the facility's normal fiscal year end. Cost reports filed subsequent to interim rate adjustments may be used to validate an interim rate adjustment.

4. Exceptions. Limited exceptions to the report requirement will be considered on an individual facility basis upon written request from the provider to Department of Health and Hospitals, Chief, Health Standards Section. If an exception is allowed, providers must attach a statement describing fully the nature of the exception for which written permission has been requested and granted prior to filing of the cost report. Exceptions which may be allowed with written approval are as follows:

a. For the initial reporting period only, the provider may allocate costs to the various cost centers on a reasonable basis if the required itemized cost breakdown is not available.

b. If the facility has been purchased, leased or has effected major changes in the accounting system as an on-going concern within the past 12 months, a six-month cost report may be filed in lieu of the required twelve month report.

c. If the facility experiences unavoidable difficulties in preparing the cost report by the prescribed due date, an extension may be requested prior to the due date. Requests for exception must contain full statement of the cause of difficulties which rendered timely preparation of the cost report impossible.

d. If a facility is new, it will not be required to file a cost report for rate setting purposes until one full operating year is completed.

5. Sales of Facilities.

a. In the event of the sale of a Title XIX facility, the seller is required to submit a cost report from the date of its last fiscal year end to the date of sale.

b. If the purchaser continues the operation of the facility as a provider of Title XIX services, he is required to furnish an initial cost report covering the date of purchase to the end of the facility fiscal year under his ownership. Thereafter, the facility will file a cost report annually on the purchaser's designated fiscal year end.

EXAMPLE: Mr. X purchased facility J from Mr. Q on September 1, 1993. Facility J's fiscal year end, prior to purchase, was 12/31/93. Mr. Q is required to file a cost report for the period 1/1/93 through the period 8/31/93. If Mr. X decides to change facility J's fiscal year end to 6/30/93, his first report will be due for the nine month period ending 6/30/94, and annually thereafter. NOTE: Facilities purchased as on-going concerns are not considered new

facilities for cost reporting purposes.

6. New Facilities

a. For cost reporting purposes a new facility is defined as a newly constructed facility. A new facility is paid the applicable patient Level of Care rates. A new facility is not required to file a cost report for rate setting purposes until one full operating year has been completed.

b. A facility purchased as an on-going concern is not considered a new facility for reimbursement rate determination. Cost data shall be submitted as required for the original ownership. Any additional costs, such as increased depreciation, interest, etc., will be reflected in the future year's per diem rates only.

Rose V. Forrest  
Secretary

9509#029

**DECLARATION OF EMERGENCY**

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

**Vaccines for Children Program**

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

The Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 Section 13631 created the Pediatric Vaccine Distribution Program (known as the Vaccines for Children Program) which became effective October 1, 1994, but was not mandated until October, 1995. OBRA 1993 added a new Section 1928 to the Social Security Act which requires that states establish a program for the purchase and distribution of pediatric vaccines to providers qualified under and registered with the program for the purpose of immunizing children eligible under the act. One of the federally mandated groups of children who are entitled to receive immunizations without charge for the cost of vaccines to their parents/guardians are Medicaid eligible children. Therefore, the Medicaid Program is required to reimburse qualified and registered providers for the administration of the immunization to Medicaid eligible children. The Health Care Financing Administration and the Office of Public Health within the Department of Health and Hospitals are responsible for the distribution of these vaccines to private providers who are registered and qualified under the federal requirements to receive and administer these vaccines. At this time the Office of Public Health is able to distribute these vaccines only to their public health units and

the federally qualified health centers, but should begin distribution to private providers in October, 1995.

Adoption of this emergency rule on January 20, 1995 (*Louisiana Register*, Volume 21, Number 1) and redeclaration on May 21, 1995 (*Louisiana Register*, Volume 21, Number 5) was necessary to implement this Vaccines for Children Program under the Medicaid Program in order for the state to conform with federal law and thereby avoid possible sanctions or penalties by the federal government. It is estimated that implementation of this rule will result in an aggregate cost savings of \$3,848,598 for state fiscal year 1995-96 for the public sector only. Due to a lack of a federal distribution system to private providers, the department is unable to project at this time when this distribution system will be in place for the private providers and therefore is unable to project the cost savings related to the private sector. The following emergency rule provides for the continuation of the program and the implementing regulations.

#### Emergency Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes the Medicaid Vaccines for Children Program whereby the bureau will reimburse qualified and registered providers only for the administration of the pediatric vaccines. This program shall be instituted through a phase-in process to allow for the distribution of these vaccines on a statewide basis to both public and private providers. Initial distribution shall be only to the Office of Public Health Units and Federally Qualified Health Centers. Private providers will be phased in as a distribution system becomes available. The following provisions govern the reimbursement of pediatric vaccines under the Medicaid Vaccines for Children Program.

1. A qualified and registered provider must:

- A. be a licensed health care provider who has authority under Louisiana state law to administer pediatric vaccines;
- B. be an enrolled Medicaid provider and an enrolled Vaccines for Children Program provider; and
- C. not have been found by the Health Care Financing Administration or Louisiana to have violated a provider agreement or other applicable requirements.

2. Medicaid reimbursement for the administration cost of the pediatric vaccines is \$9.45 for the first year and this rate will be inflated by the "Medical - All Items line" of the Consumer Price Index (CPI) for each of the succeeding two years; and

- A. is provided only for Medicaid eligible children; and
- B. shall be made only for the administration of vaccines in accordance with the immunization schedule adopted by the National Academy of Pediatrics as required by the KIDMED Program under the Medicaid Program.

3. Medicaid reimbursement for the cost of the pediatric vaccines administered to Medicaid-eligible children that may be obtained through the Vaccines for Children Program will remain at the current Medicaid payment rates through a date to be determined by the bureau. Subsequent to that time the Office of Public Health has implemented the distribution system for VFC immunizations to private providers, the Medicaid Program will begin to reimburse only the \$9.45 for

the administration cost.

4. The pediatric vaccines included under the Medicaid Vaccines for Children's Program include the following:

- A. DTaP—Diphtheria, Tetanus and acellular Pertussis;
- B. DTP—Diphtheria, Tetanus, Pertussis;
- C. MMR—Measles, Mumps and Rubella;
- D. Poliovirus;
- E. Hep B - Hepatitis B;
- F. HIB - Hemophilus Influenza B.
- G. Td - Tetanus diphtheria;
- H. DTP - HIB combination vaccine.

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

Rose V. Forrest  
Secretary

9509#080

## DECLARATION OF EMERGENCY

Department of Labor  
Office of Workers' Compensation

Compliance Penalty (LAC 40:I.109)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedures Act, and under the authority of R.S. 23:1291(B)(13), the director of the Office of Workers' Compensation declares that the following rule is adopted to be effective August 18, 1995, for a period of 120 days or until the final rule is adopted, whichever occurs first.

The adoption and amendment of these rules is necessary to implement the provisions of Act 246 of the 1995 Regular Session of the Legislature, and to enforce the existing rules of the Office of Workers' Compensation.

### Title 40

## LABOR AND EMPLOYMENT

### Part I. Workers' Compensation Administration

#### Chapter 1. General Provisions

#### §109. Compliance Penalty

A. Unless otherwise provided for in the rules of the Office of Workers' Compensation, a person or entity that fails to comply with any rule or regulation adopted under the provisions of the Workers' Compensation Act may be penalized with a fine not to exceed \$500.

B. Penalties may be imposed pursuant to this rule after a contradictory hearing before the director or his designee.

C. A person or entity may appeal any penalty imposed pursuant to this rule by filing a Disputed Claim Form, LDOL-WC-1008, in the district where the person or entity is located or in Baton Rouge, Louisiana. Any penalty imposed pursuant to this rule becomes final and may be pursued for collection unless such an appeal is filed within 30 days of the notice of the penalty.



AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1291(B)(13).

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 11:775 (August 1985), repealed and repromulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:357 (April 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 21:

O. Larry Wilson  
Director

9509#023

## DECLARATION OF EMERGENCY

### Department of Treasury Bond Commission

#### Line of Credit Increase

The State Bond Commission amended the commission's rule on August 17, 1995, as originally adopted on November 20, 1976.

The commission amended Rule No. 15 of the original commission rules and increased the maximum amount of authorized lines of credit as follows:

15. Line of Credit - a line of credit is an authorization to a state agency to proceed with a project and draw from the State Treasury funds for the project prior to the sale of bonds for that project. The maximum amount of lines of credit which may be authorized by the commission shall be \$200,000,000. Bonds shall be issued to replenish lines of credit granted in the fiscal year in which the line of credit was granted. No lines of credit may be granted for a project unless and until either the bonds have been sold, lines of credit have been granted, or a certificate of impossibility and impracticality has been issued for all projects of higher priority as stated in the comprehensive capital budget adopted by the legislature. The maximum amount of lines of credit provided herein shall not apply in cases where the commission shall deem an item to be an emergency matter.

Monies advanced on a line of credit for any project shall be spent only in accordance with the description in the bond authorization act authorizing bonds to be issued for that project.

Prior to the execution of any contract or agreement obligating the expenditure of monies received by any state department or agency or any other entity from line of credit funds, the Attorney General's Office shall be requested to review such proposed contracts or agreements for the sole purpose of determining whether expenditure of funds hereunder is for the purpose of furthering the applicable project adopted by the legislature. If given, such prior approval by the Attorney General's Office shall be in writing to the appropriate state department, agency or other entity with a copy to be furnished to the State Bond Commission.

Should the Attorney General's Office determine that the proposed expenditure of line of credit funds not be in order, no funds may be used to pay obligations which may be incurred if such contracts are executed after an adverse conclusion by the Attorney General's Office.

All approvals of lines of credit shall be conditioned on compliance by the state department, agency or other entity with the aforementioned procedure, and it shall be their duty to request approval from the Attorney General's Office, stating to which bond act and to which project the contract or agreement in question pertains. Failure to comply with such procedure by any such department, agency or other entity shall result in the immediate revocation of the line of credit, and all information regarding the possible expenditure of line of credit funds for other than authorized purposes shall be forwarded immediately by the commission to the Attorney General's Office and the District Attorney's Office.

This emergency rule is necessary to ensure continued construction and funding of all projects heretofore begun and contained in Priority 1 of the current Capital Outlay Act, Act 1096 of the 1995 Regular Session of the Louisiana Legislature.

This rule is effective immediately and will remain in effect until the delivery of the next issue of general obligation bonds of the State of Louisiana or 120 days, whichever occurs earlier, at which time the maximum amount of lines of credit which may be authorized by the commission shall be \$100,000,000.

Rae W. Logan  
Director

9509#019

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Office of Fisheries

#### Freshwater Mussel Harvest Closure

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D), the Administrative Procedure Act, and under authority of R.S. 56:450(A)(1) and LAC 76:VII.161.B; the secretary of the Department of Wildlife and Fisheries does hereby enact the following emergency rule.

All freshwater mussel fishing seasons will be closed effective at sunset on September 15, 1995.

The 1995 commercial freshwater mussel season has been a huge success in Louisiana. Preliminary department data from commercial mussel harvest indicates a healthy population of mussels in the state. Fishing activities and mussel harvest far exceeded what the department initially anticipated for this industry.

With the success of this program comes an additional burden on limited department resources. The resources expended to monitor the mussel industry far exceeded our expectations and especially demanded an increased biological and law

enforcement presence to oversee this industry. With fall quickly approaching, these limited technical and law enforcement resources will be greatly diluted statewide.

The department needs time to assess the effects of exploitation of mussel resources, analyze harvest data, and to amend rules and regulations for better biological management and enforcement of the mussel industry.

Wise conservation practices therefore dictate that the department close the 1995 commercial mussel harvesting season. Closure of recreational harvest is also dictated at this time because of enforcement considerations. The Department of Wildlife and Fisheries feels that by taking this management step, mussel resources will provide a viable industry for many years to come. The 1996 freshwater mussel fishing seasons are anticipated to be reopened in the spring of 1996, at which time the public will be informed.

Joe L. Herring  
Secretary

9509#010

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Office of Fisheries

Gill and Trammel Nets Marking System (LAC 76:VII.181)

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:320(F), adopts the rule set forth below.

This Declaration of Emergency is necessary because Act 1316 of the 1995 Legislature mandates the Department of Wildlife and Fisheries to adopt this rule.

The effective date of Act 1316 is August 15, 1995, and the effective date of the Declaration of Emergency shall be September 1, 1995. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 1. Freshwater Sport and Commercial Fishing

#### §181. Marking System for Freshwater Gill Nets and Trammel Nets

Each gill net or trammel net used to take freshwater commercial fish shall be marked with a waterproof tag attached to the corkline at each end of the net, no more than three feet from the edge of the webbing. Said tags shall be supplied by the commercial fisherman and shall be completely waterproof. Each tag shall have the fisherman's full name (no initials) and commercial fisherman's license number (not the net license number) printed thereon in the English language, so as to be clearly legible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:320(F).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 21:

Joe L. Herring  
Secretary

9509#015

## DECLARATION OF EMERGENCY

### Department of Wildlife and Fisheries Office of Fisheries

Oyster Landing

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Department of Wildlife and Fisheries to use emergency procedures to establish rules for the taking of oysters and R.S. 56:6(25)(a), which allows the Wildlife and Fisheries Commission to set seasons, times, places, size limits, quotas, daily take and possession limits for the taking of fish and Act 234 (House Bill 976) of the 1995 Regular Session of the Louisiana Legislature which directs the department to adopt rules regulating the landing of oysters outside the state, the secretary of the Department of Wildlife and Fisheries does hereby establish the following emergency rule effective August 18, 1995 for 120 days.

Effective August 18, 1995, a lessee legally harvesting oysters which have been properly tagged from his own lease may land those oysters outside the state if the vessel operating in his behalf has on board a permit for that vessel issued by the Department of Wildlife and Fisheries. This permit does not exempt the lessee from any of the rules, regulations and license requirements of this and other state agencies and of the other states as they pertain to the interstate shipment of shellfish. These permits may be obtained from the Baton Rouge and New Orleans Licensing Offices of the Department of Wildlife and Fisheries and shall be valid for a period of one calendar year from January 1 through December 31. The cost of the permit shall be \$100. Permits shall include oyster lessee name, address, phone number, lease numbers, and vessel registration and shall not be transferable. In order to qualify for the permit, proof of lease ownership must be provided. The permit shall be on board the vessel during transport. Transport logs shall be completed and returned to the Department at the end of each calendar month. Failure to provide the required transport logs may result in suspension or revocation of the permit, at the discretion of the Department. Failure to abide by all permit requirements may result in loss of the permit and/or other legal action being taken against the permittee.

Joe L. Herring  
Secretary

9509#009

# DECLARATION OF EMERGENCY

## Department of Wildlife and Fisheries Office of Management and Finance

### Payment Schedule for Nets

The Department of Wildlife and Fisheries is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.D. adopts the rule set forth below. This Declaration of Emergency is necessary because Act 1316 of the 1995 legislature mandates the Department of Wildlife and Fisheries to adopt this rule no later than September 1, 1995, which is the effective date of this Declaration of Emergency.

It shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program on or before October 1, 1995, and must have met all of the following criteria: 1) must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993; 2) during two of those years shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species; 3) shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation; and 4) must have been a bona fide resident of Louisiana on June 30, 1995.

Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries will provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

Beginning September 1, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a copy of the

applicant's Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries, 2000 Quail Drive, Baton Rouge, LA or by mail to Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316 and this Declaration of Emergency.

Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

Monetary reimbursement for nets to be purchased under this Declaration of Emergency shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: 30 percent to the Enforcement Division of the Department in accordance with the Act, and the remaining 70 percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June 1996, 70 percent of the revenue collected from the LMRC Stamp will be used for the remainder of the Commercial Fisherman's Assistance Program as defined in Act 1316, R.S. 56:13.1.C.

The disbursement of available funds for nets shall be calculated on a prorata basis to accommodate the number of qualified applicants at a rate not to exceed 50 percent of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon 50 percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected.

	Gill Nets	Seines
Mesh Depth	Price per foot	Price per foot
4' - 6'	\$ .25	\$ .76
over 6' - 8'	\$ .30	\$ .80
over 8' - 10'	\$ .38	\$ .87
over 10' - 12'	\$ .42	\$ .92
over 12' - 14'	\$ .44	\$ .96
over 14'	\$ .53	\$1.02
Trammel Nets		
	Price per foot	
4' - 6'	\$ .38	
over 6' - 8'	\$ .40	
over 8' - 10'	\$ .43	
over 10'	\$ .45	
Fish Trawls		
Complete	\$11.22 per foot of trawl width	
Trawl only	\$6.84 per foot of trawl width	

Joe L. Herring  
Secretary

9509#012

# DECLARATION OF EMERGENCY

## Department of Wildlife and Fisheries Wildlife and Fisheries Commission

### Black Drum, Sheepshead, and Flounder Harvest (LAC 76:VII.349)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:326.1, 56:326.3, and 56:325.4 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995.

This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

The Wildlife and Fisheries Commission herein establishes rule and regulations governing the harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets.

#### Title 76

#### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishing

#### §349. Rules for Harvest of Black Drum, Sheepshead, Flounder and Other Saltwater Species using Pompano Strike Nets

##### A. Drum/Sheepshead Strike Net Permit

1. The commercial taking of black drum, sheepshead and flounder with pompano strike nets is prohibited except by special permit issued by the Department of Wildlife and Fisheries, hereby designated as a Drum/Sheepshead Strike Net Permit. This permit is required in addition to the Pompano Strike Net License required by law.

2. No person shall be issued a Drum/Sheepshead Strike Net Permit unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified,

audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

d. The applicant shall not have been convicted of any fishery-related violations that constitutes a class three or greater violation.

3. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any Drum/Sheepshead Strike Net Permit and shall be forever barred from receiving any such permit in the future.

##### B. Commercial Taking of Saltwater Finfish using Pompano Strike Nets

1. There shall be two seasons for the commercial harvest of all species of saltwater finfish (other than mullet, spotted seatrout and red drum) with a pompano strike net: the first season shall open on Monday October 16, 1995, and end with the closure of the mullet strike net season, but no later than March 1, 1996; the second season shall open on Monday October 21, 1996, and end with the closure of the mullet strike net season, but no later than March 1, 1997. A season for the taking of these species shall be closed prior to the dates listed in this paragraph if the commercial quota for that species has been taken, or on the date projected by the staff of the Department of Wildlife and Fisheries that a quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to public.

2. During these two seasons the commercial harvest of these species with pompano strike nets shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of these species with pompano strike nets during the period after sunset and before sunrise.

3. The commercial taking of these species by using a pompano strike net in excess of 1200 feet in length is prohibited. Furthermore, use of more than one pompano strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each pompano strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the Drum/Sheepshead Strike Net Permit number, if applicable. The department shall not issue any tag to a person who does not have a social security number.

5. Each Drum/Sheepshead Strike Net Permit holder shall on or before the tenth of each month file a return to the department on forms provided or approved for the purpose, the pounds of black drum from 16 to 27 inches, the number of black drum over 27 inches, the pounds of sheepshead and the pounds of flounder taken commercially during the preceding month, the gears used for harvest, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

C. General Provisions. Effective with the closure of a commercial season for black drum, sheepshead, or flounder,

there shall be a prohibition of the commercial take from Louisiana waters, and the possession of that species on the waters of the state with pompano strike nets in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of fish legally taken 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. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:6(10), 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:698 (August 1990), amended LR 22:

Glynn Carver  
Vice-Chairman

9509#017

**DECLARATION OF EMERGENCY**

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

Commercial Fisherman's Assistance  
Program (LAC 76:XVII.101)

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:13.1.B(1) adopts the rule set forth below. Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to provide economic assistance to those commercial fishermen who are displaced or severely financially impacted by the loss of the use of commercial fishing nets due to its enactment. Initial promulgation of this rule as a Declaration of Emergency is necessary because the act establishes a deadline for implementation which predates the earliest date for promulgation of a final rule through nonemergency rulemaking procedures.

This Declaration of Emergency shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule whichever occurs first.

The Wildlife and Fisheries Commission herein establishes procedures for determining proof of income of applicants for economic assistance under R.S. 56:13.1.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part XVII. Commercial Fisherman's Assistance**

**Program**

**Chapter 1. Proof of Income**

**101. Criteria for Establishing Proof of Income and Procedures**

An applicant for economic assistance shall have derived

more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1995, 1994, and 1993.

Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:13.1.B(1).

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:

Glynn Carver  
Vice-Chairman

9509#011

**DECLARATION OF EMERGENCY**

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

Ducks, Coots, and Geese Seasons

In accordance with the emergency provision of R.S. 49:953(B) of the Administrative Procedure Act and under the authority of R.S. 56:115, the secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following emergency rule. The hunting seasons for ducks, coots and geese during the 1995-96 hunting season shall be as follows:

**Ducks and Coots**

West Zone (50 days)

- November 11 (Saturday) - December 3 (Sunday)
- December 16 (Saturday) - January 11 (Thursday)

East Zone (50 days)

- November 18 (Saturday) - November 30 (Thursday)
- December 16 (Saturday) - January 21 (Sunday)

Catahoula Lake (50 days)

- November 18 (Saturday) - November 30 (Thursday)
- December 16 (Saturday) - January 21 (Sunday)

Daily Bag Limits. The daily bag limit on ducks is five and may include no more than four mallards (no more than one of which may be a female), three mottled ducks, one black duck, two wood ducks, one pintail, one canvasback and one redhead. Daily bag limit on coots is 15.

Mergansers. The daily bag limit for mergansers is five, only one of which may be a hooded merganser. Merganser limits are in addition to the daily bag limit for ducks.

Possession Limit. The possession limit on ducks, coots and mergansers is twice the daily bag limit.

**Geese: Statewide Season**

November 11 (Saturday) - December 3 (Sunday)  
December 16 (Saturday) - January 31 (Wednesday)  
February 1 (Thursday) - February 25 (Sunday)

Daily bag limit is 10 in the aggregate of blue, snow and white-fronted geese of which not more than two may be white-fronted (specklebellies). During the last 25 days (February 1 - February 25), only blue and snow geese may be taken. During the Canada Goose Season (January 24 - January 31) the daily bag limit for Canada and white-fronted geese is two, of which not more than one can be a Canada goose. Possession limit is twice the daily bag limit.

**Canada Goose Season**

January 24 - January 31

The Canada Goose Season will be statewide EXCEPT for a portion of southwest Louisiana. The area closed shall be described as follows: That portion of Cameron and Vermilion parishes from the Texas state line south of Highway 82 to its junction with the Calcasieu Ship Channel, east of the Calcasieu Ship Channel to its junction with the Intracoastal Waterway, south of the Intracoastal Waterway to its junction with Highway 82 at Forked Island, west of Highways 82 and 3147 to the junction of Highway 3147 and Freshwater Bayou. Open waters of Lake Arthur and the Mermentau River from the Highway 14 bridge southward will also be closed to Canada goose hunting.

A special permit shall be required to participate in the Canada Goose Season. A permit is required of everyone, regardless of age, and a non-refundable \$5 administrative fee will be charged. This permit may be obtained from any district office.

Return of harvest information requested on permit is mandatory. Failure to submit this information to the department by February 15, 1996 will result in the hunter not being allowed to participate in the Canada Goose Season the following year.

Shooting Hours. One-half hour before sunrise to sunset.

A declaration of emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective November 1, 1995 and extend through sunset on February 29, 1996.

Joe L. Herring  
Secretary

9509#054

**DECLARATION OF EMERGENCY**

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

**Fur Harvest Season**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and R.S. 49:967(D) which provides that the Wildlife and Fisheries Commission use emergency procedures to set the 1995-96 fur harvest season statewide from November 20, 1995 through March 20, 1996. Authority to extend or shorten the adopted season by the secretary is hereby authorized by the Wildlife and Fisheries Commission.

Perry Gisclair  
Chairman

9509#056

**DECLARATION OF EMERGENCY**

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

**Mullet Harvest (LAC 76:VII.343)**

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(25)(a), 56:326.3, and 56:333 as described in Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995.

This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 3. Saltwater Sport and Commercial Fishing**

**§343. Rules for Harvest of Mullet**

**A. Seasons**

1. The season for the commercial taking of mullet shall begin at sunrise of the third Monday in October of each year and close at sunset of the third Monday in January of the following year. Mullet may not be taken commercially at any time outside of this season.

2. Commercial harvest of mullet shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of mullet during

the period after sunset and before sunrise.

**B. Commercial Taking**

1. Mullet may only be taken commercially with a mullet strike net, which may not be constructed of monofilament. The commercial taking of mullet by using a mullet strike net in excess of 1200 feet in length or by using more than one mullet strike net from any vessel at any time is prohibited.

2. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take mullet. The department shall not issue any tag to a person who does not have a social security number.

**C. Commercial Limits.** During the season, there shall be no daily take or possession limit for the commercial harvest of mullet by properly licensed and permitted fishermen.

**D. Recreational Limits.** The daily take and possession limit for recreational harvest of mullet shall be 100 pounds per person per day.

**E. Permits**

1. The commercial taking of mullet is prohibited except by special permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

2. No person shall be issued a license or permit for the commercial taking of mullet unless that person meets all of the following requirements:

a. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

b. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

c. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

3. No person shall receive more than one permit or license to commercially take mullet.

4. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take mullet and shall be forever barred from receiving any permit or license to commercially take mullet.

5. Each Mullet Permit holder shall, on or before the tenth of each month of the open season, submit an information return to the department on forms provided or approved for

this purpose, including the pounds of mullet taken commercially during the preceding month, and the commercial dealers to whom these were sold. Monthly reports shall be filed, even if catch or effort is zero.

**F. General Provisions.** Effective with the closure of the commercial season for mullet, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of mullet on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of mullet legally taken 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. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

**G.** In addition, all provisions of R.S. 56:333(C) are hereby adopted and incorporated into this rule.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1, 56:333 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:1420 (December 1992), amended LR 21:37 (January 1995), LR 22:

Glynn Carver  
Vice-Chairman

9509#018

**DECLARATION OF EMERGENCY**

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

Oyster Season, Calcasieu and Sabine Lakes

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967, and under the authority of R.S. 56:433 and R.S. 56:435.1, notice is hereby given that the secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

1. The Calcasieu and Sabine Lake tonging area will open one-half hour before sunrise on October 16, 1995 and remain open until one-half hour after sunset on March 1, 1996 with the secretary having the authority to extend to compensate for the health closure days.

2. The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource subsides.

3. The secretary of the Department of Wildlife and Fisheries is authorized to take emergency action if necessary, to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival.

4. Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action.

Perry Gisclair  
Chairman

9509#055

## DECLARATION OF EMERGENCY

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

#### Saltwater Rod and Reel License (LAC 76:VII.405)

The Wildlife and Fisheries Commission is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:305.B.(14)(b) adopts the rule set forth below. Initial promulgation of this rule as a Declaration of Emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995.

This Declaration of Emergency is effective September 1, 1995, and it remains in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule whichever occurs first.

The Wildlife and Fisheries Commission herein establishes procedures relative to the proof of income of applicants for a saltwater commercial rod and reel gear license.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 4. License and License Fees

#### §405. Saltwater Commercial Rod and Reel License; Proof of Income

A. Each applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the three years, 1995, 1994, and 1993.

B. Proof of income shall be provided by the applicant in the form of a copy of his federal income tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service and a copy of his state tax return which has been certified by the Department of Revenue and Taxation. In the event that the certified copies of the tax returns, including Schedule C, do not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:305.B.(14)(b).

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:

Glynn Carver  
Vice-Chairman

9509#013

## DECLARATION OF EMERGENCY

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

#### Spotted Seatrout Harvest (LAC 76:VII.341)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to their authority under R.S. 56:6(10), 56:6(25)(a), 56:325.3, 56:326.3, and 56:325.3 as amended by Act 1316 of the 1995 Regular Legislative Session, adopts the rule set forth below. This emergency rule is necessary because Act 1316 of the 1995 Regular Legislative Session mandates that the Commission establish rules for the implementation of the Louisiana Marine Resources Conservation Act of 1995 for an effective date of August 15, 1995.

This emergency rule shall be effective on September 1, 1995, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule whichever occurs first.

#### Title 76

### WILDLIFE AND FISHERIES

#### Part VII. Fish and Other Aquatic Life

#### Chapter 3. Saltwater Sport and Commercial Fishing

#### §341. Spotted Seatrout Management Measures

##### A. Commercial Season; Quota; Permits

1. The season for the commercial taking of spotted seatrout shall begin at sunrise on the third Monday in November of each year, and close at sunset on May 1 the following year or when the quota has been reached or on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first.

2. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial quota for spotted seatrout shall be one million pounds for each fishing season.

##### 4. Permits

a. The commercial taking of spotted seatrout is prohibited except by special nontransferable Spotted Seatrout Permit issued by the Department of Wildlife and Fisheries at the cost of \$100 for residents of this state and \$400 for those who are nonresidents.

b. No person shall be issued a license or permit for the commercial taking of spotted seatrout unless that person meets all of the following requirements:

i. The person shall provide proof that he purchased a valid Louisiana commercial saltwater gill net license in any two of the years 1995, 1994, and 1993.

ii. The person shall show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species in any two of the years 1995, 1994, and 1993. Proof of such income shall be provided by the applicant in the form of a copy of his federal income tax return including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. In the event



that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified, audited return to that effect which has been prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Tax returns for at least two of the years 1995, 1994 and 1993 shall be provided by the applicant.

iii. The person shall not have applied for or received any assistance pursuant to R.S. 56:13.1(C).

iv. The applicant shall not have been convicted of any fishery-related violations that constitute a class three or greater violation.

c. No person shall receive more than one permit or license to commercially take spotted seatrout.

d. Any person convicted of any offense involving fisheries laws or regulations shall forfeit any permit or license issued to commercially take spotted seatrout and shall be forever barred from receiving any permit or license to commercially take spotted seatrout.

5. Each Spotted Seatrout Permit holder shall, on or before the 10th of each month of the open season, submit an information return to the department on forms provided or approved for this purpose, including the pounds of spotted seatrout taken commercially during the preceding month, and the commercial dealers to whom these were sold, if sold. Monthly reports shall be filed, even if catch or effort is zero.

**B. Commercial Taking of Spotted Seatrout Using Mullet Strike Nets, Seasons**

1. There shall be two seasons for the commercial harvest of spotted seatrout with a mullet strike net: the first season shall open on Monday, November 20, 1995, and end no later than March 1, 1996; the second season shall open on Monday, November 18, 1996, and end no later than March 1, 1997. Such seasons shall be closed prior to the dates listed in this paragraph if:

a. one million pounds of spotted seatrout have been taken commercially during a fishing season; or

b. on the date projected by the staff of the Department of Wildlife and Fisheries that the quota will be reached, whichever occurs first. The closure shall not take effect for at least 72 hours after notice to the public.

2. During these two seasons the commercial harvest of spotted seatrout with mullet strike nets shall not be allowed during the period from 5 a.m. on Saturday through 6 p.m. on Sunday. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

3. The commercial taking of spotted seatrout by using a mullet strike net in excess of 1200 feet in length is prohibited. Furthermore, use of more than one mullet strike net from any vessel at any time is prohibited, and use of monofilament strike nets is also prohibited.

4. Each mullet strike net shall have attached to it a tag issued by the department which states the name, address, and social security number of the owner of the net and the permit number of the permit issued to commercially take spotted

seatrout. The department shall not issue any tag to a person who does not have a social security number.

**C. Commercial Taking of Spotted Seatrout Using Other Commercial Gear**

1. There shall be no commercial taking of spotted seatrout during the period after sunset and before sunrise.

2. During the 1995-1996 season for harvest of spotted seatrout with a mullet strike net, all other legal methods of harvest may also be used until March 1, 1996. After that date, only commercial rod and reel may be used for the commercial harvest of spotted seatrout, provided that the commercial harvest of spotted seatrout does not exceed the commercial quota.

3. During the 1996-1997 season for commercial harvest of spotted seatrout with a mullet strike net, only a mullet strike net or a commercial rod and reel may be used for the commercial harvest of spotted seatrout provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

4. Following the closure of the 1996-1997 season for the harvest of spotted seatrout with a mullet strike net, only a commercial rod and reel shall be used for the commercial harvest of spotted seatrout, provided the commercial harvest of spotted seatrout does not exceed the commercial quota.

D. General Provisions. Effective with the closure of the commercial season for spotted seatrout, there shall be a prohibition of the commercial take from Louisiana waters, and the possession of spotted seatrout on the waters of the state with commercial gear in possession. Nothing shall prohibit the possession, sale, barter or exchange off the water of spotted seatrout legally taken 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. and R.S. 56:345 and be properly licensed in accordance with R.S. 56:303 or R.S.306.

AUTHORITY NOTE: Promulgated in accordance with Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:199 (February 1992), amended LR 22:

Glynn Carver  
Vice-Chairman

9509#016

**DECLARATION OF EMERGENCY**

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

Trail Rides on Wildlife Management Areas (WMA)  
(LAC 76:III.109)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:109, 115, 752, 754, 763, 782 and 785,

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

**Title 76**

**WILDLIFE AND FISHERIES**

**Part III. State Game and Fish Preserves and Sanctuaries**

**Chapter 1. Responsibilities, Duties and Regulations**

**§109. Trail Rides on WMAs**

A. Organized trail rides are not consistent with the purpose and operations of wildlife management areas (WMA) or refuges owned by the Department of Wildlife and Fisheries and/or State of Louisiana and shall not be permitted. No special permits or exemptions to existing rules shall be issued by the department for organized trail rides on wildlife management areas or refuges managed by the department under lease from other parties.

B. For the purposes of this rule, an organized trail ride shall include but not be limited to:

1. any gathering where participants tender a fee or donation to any entity other than the department to participate in a group activity such as all terrain vehicle riding, horseback riding, or wagon riding; or
2. any event whose primary purpose is the use of trails that is advertised in any way to attract participants; or
3. any event involving the use of trails at which there are vendors selling commodities whether such commodities are sold for profit or not; or
4. any organized event or gathering of individuals involving any manner of conveyance or conveyances to be used on the WMA that causes excessive damage to roads, trails, or to the habitat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:109, 115, 752, 754, 763, 782 and 785.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:

The commission finds that organized trail rides on the department's wildlife management areas will negatively impact wildlife habitat associated with the areas, disturb wildlife, contribute significantly to the deterioration of existing roads, increase user conflicts and cause sufficient environmental damages to warrant such action. The department will take the necessary steps to establish a permanent rule pertaining to organized trail rides on wildlife management areas.

Perry Gisclair  
Chairman

9509#057

**DECLARATION OF EMERGENCY**

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

Traversing Permit (LAC 76:VII.403)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission are exercising the emergency

provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to their authority under R.S. 56:305.5.B. and R.S. 56:320.2.E. adopts the rule set forth below. Promulgation of this rule as a Declaration of Emergency is necessary because Act 1316 (The Louisiana Marine Resources Conservation Act of 1995) mandates the Department of Wildlife and Fisheries to implement the Act effective August 15, 1995.

This Declaration of Emergency is effective September 1, 1995, and it shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule whichever occurs first.

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby establish rules and regulations for the issuance of permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone, and to carry out the provisions of R.S. 320.1.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 4. License and License Fees**

**§403. Traversing Permit**

A. The Department of Wildlife and Fisheries is authorized to issue a Traversing Permit upon application to its Commercial License Section at the Baton Rouge office for a fee of \$250 for each permit. Application for permits must be made in person.

B. The Traversing Permit shall be valid for the calendar year of issue (January 1 through December 31).

C. The captain or vessel owner shall only be required to have one Traversing Permit for any number of gill nets, trammel nets, strike nets, or seines. Each gear used in the waters of the federal exclusive economic zone (EEZ) shall be properly licensed. For licensing purposes, trammel nets, strike nets, and seines are required to be licensed as gill nets when used in the EEZ.

D. The possession of gill nets, trammel nets, strike nets, or seines on or aboard any vessel in the saltwater areas of the state is prohibited unless the captain or owner of the vessel has in his immediate possession upon the vessel a Traversing Permit as well as any other licenses as required by law.

E. While traversing state waters going to and from the waters of the federal exclusive economic zone, all gill nets, trammel nets, strike nets, and seines shall remain on board the vessel and shall not be used in state waters.

F. Harvest and possession of all fish pursuant to this permit is subject to all rules established by the Wildlife and Fisheries Commission relative to seasons, size limits, and quotas.

G. Vessels containing or transporting prohibited nets shall proceed as directly, continuously, and expeditiously as possible.

H. Permittees will be required to abide by the following conditions:

1. Possession of a permit does not exempt the permittee from laws or regulations except for those which may be

specifically exempted by the permit. Any violation of a fish law shall constitute a violation of this permit.

2. Information gained by the department through the issuance of a Traversing Permit is not privileged and will be disseminated to the public upon request.

3. The permittee shall report monthly the catch and effort under the permit, even when catch and effort is zero. This report shall contain total catch, total effort, and any other parameters which may be required by the Department. The report shall be filed with the enforcement division of the Department of Wildlife and Fisheries no later than 30 days following the last day of each month.

4. When permitted gear is on board the permitted vessel or in possession of the permittee, the permittee and the vessel are assumed to be operating under authority of the permit. No gear other than gear allowed under the Traversing Permit may be on board the vessel or in possession of the permittee.

5. The vessel authorized for use under the Traversing Permit shall have distinguishing signs so that it may be identified as such. The signs shall have the letters "EEZ" and assigned numbers printed on them in at least ten-inch-high letters and numbers on a contrasting background in block style so as to be visible and legible from low-flying aircraft and from any vessel in the immediate vicinity. The assigned numbers shall be situated on both sides and on top of the vessel.

6. The department reserves the right to observe the operations taking place under the Traversing Permit and, at its request, the department may assign aboard any permitted vessel an enforcement agent as an observer.

7. All permittees shall notify the department four hours prior to leaving port to traverse or fish under the conditions of the Traversing Permit and immediately upon returning from the permitted trip. The department shall be notified by calling a designated phone number.

8. The permittee must report to the department the name of the buyer who will purchase the fish product obtained under the Traversing Permit. This information shall be provided at the time that permittee notifies the department of his return.

9. When quotas have been met or seasons have been closed, no fish affected by such quotas or seasons may be possessed on board a vessel while having commercial gear on board traveling state waters.

10. Any violation of the conditions of the Traversing Permit and any violation of any fisheries regulation shall be punishable as defined by R.S. 56:320.2.D.(1) in accordance with Act 1316 of the 1995 Legislature.

**AUTHORITY NOTE:** Promulgated in accordance with 56:305.B and 56:320.2.E.

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:

Joe L. Herring  
Secretary

Glynn Carver  
Vice-Chairman

9509#014

# RULES

## RULE

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Advisory Commission on Pesticides

#### Fixed Wing Aircraft-Standards (LAC 7:XXIII.13140)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides hereby amends regulations regarding the spray nozzle orientation for fixed wing aircraft when making applications of insecticides. These rules comply with and are enabled by R.S. 3:3203.

#### Title 7

#### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticides

#### Chapter 131. Louisiana Advisory Commission on Pesticides

#### §13140. Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications

A.1. ...

2. Except as follows, all spray nozzles shall be oriented to discharge straight back toward the rear of the aircraft. When applying insecticides by aircraft, with a maximum flying speed of less than 120 miles per hour, the applicator shall have the option to position nozzles at an angle of 45 degrees down from straight back or 45 degrees back from straight down.

3. - 4. ...

5. Unless further restricted by other regulations or labeling, the chemicals listed in §13139.K above shall be applied in a minimum of five gallons of total spray mix per acre. With the exception of insecticides applied in the Boll Weevil Eradication Program, which shall be applied in accordance with their labels, all other agriculture pesticides, unless further restricted by other regulations or labeling, shall be applied in a minimum of one gallon of total spray mix per acre.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3203.

**HISTORICAL NOTE:** Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21: (September 1995).

Bob Odom  
Commissioner

9509#032

**RULE**

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Advisory Commission on Pesticides**

**Pesticide Use in School Buildings and  
Grounds Area (LAC 7:XXIII.13123 and 13144)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 3:3203(A), the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Division of Pesticides and Environmental Programs, hereby adopts the following rule concerning the implementation of regulations governing the use of pesticides in, on, or around school buildings and grounds.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXIII. Advisory Commission on Pesticides**

**Chapter 131. Advisory Commission on Pesticides**

**Subchapter F. Certification**

**§13123. Certification of Commercial Applicators**

\* \* \*

B. Categories are established on the basis of the location where the application of pesticides will be made, and each applicant for certification is required to successfully complete an examination in the category in which the applicant desires certification.

1. Certification in a category authorizes the commercial applicator to make application of or supervise the application of restricted use pesticides in the areas listed for each category.

2. The commissioner hereby establishes the following categories and subcategories of certification for commercial applicators:

(Note: The classifications in this Subsection reflect national categories established by EPA.)

\* \* \*

Category 7. Industrial, Institutional, Structural and Health Related Pest Control. This category includes commercial applicators and nonfee commercial applicators using or supervising the use of pesticides with restricted uses in, on or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent area, public or private; and for the protection of stored, processed or manufactured products.

This category has been subdivided into four subcategories:

\* \* \*

b. Subcategory 7b is for applicators who apply or supervise the application of restricted use pesticides on a nonfee basis in, on or around institutions, motels, apartment houses, hotels, hospitals and like places as the owner or in the employ of the owner.

\* \* \*

d. Subcategory 7d is for applicators who apply or supervise the application of pesticides on a nonfee basis for grass and weed control and rodent and general pest control (roaches, wasps, and ants) or Restricted Use Pesticides, in, on, or around structures and grounds of schools that provide education for classes kindergarten through 12. Pesticide applications for wood destroying insects shall be applied by licensed structural pest control operators.

i. All persons certified under 7d shall attend a continuing education program, annually.

ii. Each 7d certified applicator shall annually train all persons applying pesticides under his/her supervision according to the handler training requirements of 40 CFR 170 (Worker Protection Standards).

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 9:169 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21: (September 1995).

**Subchapter I. Application of Pesticides**

**§13144. Special Restrictions on Pesticide Applications  
in Schools**

A. Any person who applies or supervises the application of pesticides on a nonfee basis for grass and weed control and rodent and general pest control (roaches, wasps, and ants) or restricted use pesticides, in, on, or around school structures and grounds shall be a certified commercial applicator or under the supervision of a certified commercial applicator.

B. School systems with 10 or more schools shall employ a minimum of two certified commercial applicators. School systems with less than 10 schools shall employ a minimum of one certified commercial applicator.

C. The governing authority (including but not limited to superintendents, headmasters, school boards, board of directors, chief executive officer, or principals) shall prepare and submit in writing, for each school under its authority, to the director of Pesticide and Environmental Programs (PEP), an annual integrated pest management (IPM) plan for pest control for grass and weed control and rodent and general pest control (roaches, wasps, and ants) in, on, or around school structures and grounds. The IPM plan shall include all pest control methods employed, including pesticide and nonpesticide methods. The first IPM plan shall be submitted prior to any application of pesticides beginning March 1, 1995 and shall be submitted on an annual year of August 1 through July 31. The plan shall be available for review, upon request, by the commissioner and the general public, during normal school hours, at each school, in the business office. The annual IPM plan shall include, but not be limited to the following:

1. school name and mailing address, physical address, telephone number and contact person;

2. name and license or place of business number of company(s) and certification numbers of applicators, if contracted;

3. name and certification number of certified commercial applicator(s) of school system;
4. brand name and EPA registration number of all pesticides to be used;
5. for each pesticide to be used list the following:
  - a. pest to be controlled;
  - b. type of application to be used;
  - c. location of application;
  - d. restricted use pesticide or general use pesticide;
6. proposed location and date for noncertified applicator training;
7. other methods of pest control.

C. Any deviation from the integrated pest control management plan submitted shall be submitted in writing to LDAF, Director of PEP 24 hours prior to any application.

D. Records of pesticide applications for grass and weed control and general pest control, shall be maintained in accordance with LAC 7:13157.

E. No pesticides shall be applied for general pest control inside school buildings when students are present or expected to be present for normal academic instruction or extracurricular activity for at least eight hours after application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 21: (September 1995).

Bob Odom  
Commissioner

9509#035

## RULE

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Advisory Commission on Pesticides

#### Record Keeping Requirements—Pesticides (LAC 7:XXIII.13157)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, hereby amends regulations regarding the record keeping requirements of owner-operators, non-fee commercial applicators, and commercial applicators. These rules comply with and are enabled by LSA-R.S. 3:3203 and R.S. 3:3243.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXIII. Pesticides

#### Chapter 131. Louisiana Advisory Commission on Pesticides

#### Subchapter N. Record Keeping Requirements

#### §13157. Owner-Operators, Non-Fee Commercial Applicators, and Commercial Applicators

- A. Any person applying pesticides for a fee and

commercial applicators described in LAC 7: 13123, with the single exception of applicators listed in LAC 7: 13123 B.2 category 7, shall accurately maintain, for a period of two years, records of pesticide applications on a record keeping form or record keeping format approved by the director of Pesticide and Environmental Programs of LDAF. Records described herein must be maintained, within three days of the application, at the physical address of the employer or the physical address on the owner/operator license. A copy of these records shall be provided to any employee of Louisiana Department of Agriculture and Forestry upon request at a reasonable time during normal working hours. The following information shall be included on that form:

1. owner/operator name, address, and license number;
2. certified applicator, name, address, and certification number;
3. customer name and address;
4. product/brand name;
5. EPA registration number;
6. restricted/general use pesticide;
7. application date;
8. crop/type of application;
9. location of application;
10. size of area treated (acres, square feet, or minutes of spraying);
11. rate of application;
12. total amount of product (concentrate) applied;
13. applicator;
14. certification number of applicator (if applicable).

B. Non-fee commercial applicators as described in LAC 7: 13123.B.2, category 7, shall accurately maintain, for a period of two years, records of applications of all herbicides, insecticides, rodenticide, and fumigants on the appropriate record keeping form as described in LAC 7:14113 and LAC 7:13157.A and approved by the director of Pesticide and Environmental Programs of LDAF. Records described herein shall be maintained, within seven days of the application, at the physical address of the employer. A copy of these records shall be provided to any employee of Louisiana Department of Agriculture and Forestry upon request, at a reasonable time during normal working hours.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21: (September 1995).

Bob Odom  
Commissioner

9509#033

**RULE**

**Department of Agriculture and Forestry  
Office of Forestry  
and  
Department of Revenue and Taxation  
Tax Commission**

**Timber Stumpage Values (LAC 7:XXXIX.20101)**

In accordance with provisions of the Administrative Procedure Act, the Department of Agriculture and Forestry, Office of Forestry, and the Department of Revenue and Taxation hereby amends rules regarding the value of timber stumpage for calendar year 1995.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXXIX. Forestry**

**Chapter 201. Timber Stumpage**

**§20101. Stumpage Values**

The Louisiana Forestry Commission, and the Tax Commission, as required by R.S. 47:633, adopted the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 1995:

1. Pine trees and timber	\$293.44/MBF	\$36.68/ton
2. Hardwood trees and timber	\$181.36/MBF	\$19.09/ton
3. Pine Chip and Saw	\$67.82/cord	\$25.12/ton
4. Pine pulpwood	\$24.35/cord	\$ 9.02/ton
5. Hardwood pulpwood	\$ 10.40/cord	\$ 3.65/ton

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 3:3 and R.S. 3:4343.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Forestry, and the Forestry Commission, LR 4:9 (January 1978), amended LR 5:7 (January 1979), LR 6:728 (December 1980), LR 7:627 (December 1981), LR 8:651 (December 1982), LR 9:848 (December 1983), LR 10:1038 (December 1984), LR 11:1178 (December 1985), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Forestry Commission, LR 12:819 (December 1986), LR 13:432 (August 1987), LR 14:9 (January 1988), LR 15:5 (January 1989), LR 16:16 (January 1990), LR 17:476 (May 1991), LR 18:6 (January 1992), LR 19:611 (May 1993), LR 20:408 (April 1994), LR 21: (September 1995).

Bob Odom, Commissioner  
Agriculture and Forestry

Billy Weaver, Chairman  
Louisiana Forestry Commission

Malcolm B. Price, Chairman  
Louisiana Tax Commission

9509#036

**RULE**

**Department of Agriculture and Forestry  
Structural Pest Control Commission**

**Record Keeping Requirements-Structural Pest  
(LAC 7:XXV.14113 and 14135)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission hereby amends regulations regarding the record keeping requirements of licensees, to add a time frame for recertification, and to provide for a monthly report of termite perimeter applications. These rules comply with and are enabled by R.S. 3:3366, R.S. 3:3367, R.S. 3:3368 and R.S. 3:3369.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXV. Structural Pest Control**

**Chapter 141. Structural Pest Control Commission**

**§14113. Obligations of the Licensee**

A. The licensee must keep the bond and general liability insurance required under LAC 7:14107.D in full force and effect at all times.

B. The licensee must renew the permit for operation for each business location annually prior to June 30.

C. The licensee must apply for a registration certificate for each employee under his supervision within 30 days after the employee is hired and must comply with all other requirements pertaining to registration of employees set forth in LAC 7:14111.

D. The licensee must follow label and labeling requirements in all applications of pesticides not specifically covered in LAC 7:14135.

E. The licensee shall be responsible for training the employee in the kind of work which he will perform.

F. The licensee must maintain his commercial applicator certification in current status by:

1. attending a continuing educational program for recertification approved by the Louisiana Department of Agriculture and Forestry;

2. recertification at least once every three years, such recertification shall be completed by December 31 of the year preceding the third anniversary of either the original certification or the most recent recertification;

3. - 6. ...

G. - H. ...

I. Any person applying pesticides for a fee and the licensee must maintain records, at the physical address listed on the place of business permit of all applications of pesticides for a period of two years after application on a record keeping form or in a format approved by the director of Pesticide and Environmental Programs of LDAF. The licensee must make a copy of these records available to any employee of the Louisiana Department of Agriculture and Forestry for inspection at a reasonable time during normal working hours.

1. Records for Licensee(s) applications of pesticides for wood destroying insects shall contain the following information:

- a. place of business name, address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;
- e. product\brand name;
- f. EPA registration number;
- g. restricted\general use pesticide;
- h. application date and time;
- i. target pest;
- j. type of application (pre-treat, post, spot);
- k. size of area treated (square feet or linear feet);
- l. mixture concentration;
- m. total amount of emulsion applied;
- n. applicator and certification number.

2. Record keeping for licensee(s) in the general pest and commercial vertebrate phases shall contain the following information:

- a. place of business name address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated/type of application;
- j. mixture concentration (percent);
- k. applicator and certification number.

3. Records for licensee(s) in the fumigation phase shall contain the following information:

- a. place of business name, address, and number;
- b. licensee name, address, and certification number;
- c. customer name and address;
- d. location of application;
- e. product/brand name;
- f. EPA registration number;
- g. restricted/general use pesticide;
- h. application date and time;
- i. pest treated;
- j. type of application (ship, structure, commodity);
- k. size of area treated (cubic feet);
- l. rate applied;
- m. total amount of product applied;
- n. applicator, certification number.

J. - K. ...

L. The licensee must report to the Louisiana Department of Agriculture and Forestry all termite contracts, termite perimeter applications and wood destroying insect reports completed each month on the form provided by the Louisiana Department of Agriculture and Forestry. The reports listed above are due in Division of Pesticides and Environmental Programs office in Baton Rouge on or before the tenth of the month following the contract or application.

M. - P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:954 (November 1989), amended LR 21: (September 1995).

**§14135. Minimum Specifications for Termite Control Work**

A. - D. ...

E. Pre-treatment of Slabs

1. ...

2. Within 12 months after initial treatment of the outside of the foundation, the perimeter wall will be trenched and treated as required by label and labeling. The licensee shall report the completion of the application to the outside of the foundation, to the Louisiana Department of Agriculture and Forestry on the Termite Perimeter application form. Rodding will be acceptable where trenching may damage flowers and/or shrubs. Maximum distance between rod holes shall be 4 inches.

F. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15: 954 (November 1989), amended LR 21: (September 1995).

Bob Odom  
Commissioner

9509#034

**RULE**

**Department of Economic Development  
Board of Examiners of Certified Shorthand Reporters**

Certification; Continuing Education (LAC 46:XXI.317, 611)

In accordance with R.S. 37:2554, the Administrative Procedure Act, the Louisiana Board of Examiners of Certified Shorthand Reporters is hereby amending LAC 46:XXI.317 and 611. This amendment will require that any person applying for a Louisiana Court Reporting Certificate with a national certification must be domiciled in the state of Louisiana. Also, this rule will prevent reporters from receiving continuing education credits for the completion of any CPR course.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XXI. Certified Shorthand Reporters**

**Chapter 3. Examinations**

**§317. National Examinations**

The board will accept as an examination from any reporter domiciled in Louisiana under Section 2554(A) an NCRA-RPR and/or CM examination or an NSVRA examination with the equivalent or higher standards than the CCR examination

given in January 1983. Upon proper application, and upon satisfactory proof that applicant has passed such an examination, a certificate shall be issued.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2554.

**HISTORICAL NOTE:** Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:531 (August 1988), LR 21: (September 1995).

## **Chapter 6. Continuing Education**

### **§611. Activities not Acceptable for Continuing Education Credits**

Completion of any certified pulmonary respiratory course will not be accepted for continuing education credits.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:2554.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters LR 21: (September 1995).

Gay M. Pilié  
Executive Director

9509#071

## **RULE**

### **Department of Economic Development Real Estate Commission**

#### **Adjudicatory Proceedings (LAC 46:LXVII.4707)**

*(Editor's Note: A portion of the following rule, which appeared on page 460 of the May 20, 1995 Louisiana Register, is being republished to correct a codification error.)*

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part LXVII. Real Estate**

### **Chapter 47. Investigations and Hearings**

#### **§4707. Adjudicatory Proceedings**

A.1.a. - j. ...

##### **2. Formal Adjudicatory Proceedings**

a. All formal public adjudicatory hearings shall be conducted under the auspices of LSA-R.S. 37:1456 and Chapter 13 of Title 49 of the Louisiana Revised Statutes.

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

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1435 and R. S. 37:1453.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057

(December 1989), amended LR 21:460 (May 1995), repromulgated LR 21: (September 1995).

J. C. Willie  
Executive Director

9509#001

## **RULE**

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

#### **Bulletin 746—Noncertified School Personnel Hiring**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the State Board of Elementary and Secondary Education approved for adoption, the interim policy for hiring full-time/part-time noncertified school personnel. This is an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel.

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

Full-time/part-time noncertified school personnel, excluding speech, language, and hearing specialists, may be employed by local public education agencies experiencing extreme difficulty in employing certified teachers for the classroom, provided that the following documentation is submitted to the Department of Education: a signed affidavit by the local superintendent that the position could not be filled by a certified teacher; submission of names, educational background, subject matter and grade level being taught as an addendum to the Annual School Report.

A. Individuals employed under this policy must:

1. hold a minimum of a baccalaureate degree from a regionally accredited institution;
2. take all appropriate areas of the NTE at the earliest date that it is offered during the first year of employment and all appropriate areas at least once each year during subsequent years of employment; and
3. earn six semester hours of college course work each year as indicated below:

a. teachers who have not completed a teacher education program must:

(1) within the first year of employment and prior to consideration for re-employment the second year, achieve the required scores on the Communication Skills and General Knowledge portions of the NTE; be officially admitted to a teacher education program; and obtain a prescription or outline of course work required for certification;

(2) prior to consideration for re-employment each year, complete at least six semester hours of college course work as prescribed by the college or university to complete a teacher education program;

b. teachers who have completed a teacher education program but who have not achieved the required scores on all



parts of the NTE, prior to consideration for re-employment each year, must earn six semester hours appropriate to the area of the NTE (General Knowledge, Professional Knowledge, Communication Skills, Specialty Area) in which the score was not achieved.

A university sponsored seminar, workshop or course specially designed for preparing for the NTE may be used once to substitute for three semester hours of the required course work. Documentation from the university must be provided to verify participation.

B. The following documentation, as appropriate, shall be kept on file in the LEA's superintendent's/personnel office:

1. official transcripts showing a minimum of a baccalaureate degree from a regionally accredited institution;
2. documentation that the teacher has been officially admitted to a teacher education program, if applicable;
3. an outline by the college or university of the course work required for certification, or an outline of courses to help achieve the appropriate NTE scores for persons who have completed a teacher education program;
4. official transcripts showing successful completion of the six semester hours as prescribed by the college or university since the last employment under this policy;
5. documentation to verify one-time participation in a university sponsored or state approved seminar/workshop/course for NTE preparation for teachers who have completed a teacher education program;
6. an original NTE score card showing the NTE has been taken in all appropriate areas since the last employment under this policy; and
7. documentation that efforts for recruitment of certified teachers have been made (e.g., newspaper advertisements, letters, contacts with colleges, and so forth).

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

D. The total number of years a person may be employed according to the provisions of this policy is five years.

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

1. Medical Excuse. When serious medical problems of the teacher or immediate family in the same household exist, a doctor's statement is required with a letter of assurance from the teacher that the hours will be earned within a calendar year.
2. Required Courses not Available. A letter of verification from area universities is required stating that the required courses are not being offered.
3. Change of School, Parish, or School System. Re-employment is permitted only if the change is not part of a continuous pattern.
4. Change of Certification Areas. Re-employment is permitted with assurance that the requirements for continued employment under this policy will be met.

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

This interim emergency policy will remain in effect until July 1, 1997. This policy does not apply to university laboratory schools.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 21: (September 1995).

Carole Wallin  
Executive Director

9509#072

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 746—Temporary Teaching Assignments

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted the revised policy for temporary teaching assignments. This is an amendment to Bulletin 746, Louisiana Standards for State Certification of School Personnel.

#### Policies and Criteria Governing the Issuance of Temporary Teaching Assignments (Valid for One Year)

Policies and criteria governing the issuance of temporary teaching assignments are as follows:

1. A temporary teaching assignment, valid for one school session only and authorizing the employment of a specified teacher in a position for which he is not regularly certified, excluding speech, language and hearing specialist, may be issued by the employing superintendent if criteria herein outlined are met and provided the following statement is signed by the superintendent on each temporary teaching assignment:

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

2. A temporary teaching assignment may be made only for persons who have a baccalaureate degree from a regionally accredited institution.

3. Teachers who do not hold a regular Louisiana teaching certificate must have achieved the appropriate scores on all required areas of the NTE.

4. Teachers who do not hold a regular Louisiana teaching certificate, within the first year and prior to consideration for employment the second year, must be officially admitted to a teacher education program and obtain from a college or university a prescription or outline of course work required for certification.

5. Certified teachers who are placed on a temporary teaching assignment must obtain a prescription or outline of course work required for certification in the area of teaching assignment.

6. To re-employ a teacher on a temporary teaching assignment, a minimum of six semester hours of credit earned in residence or by extension must be earned. The hours must be applicable toward the prescription or outline of course work required for certification.

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

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

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

c. Change of School, Parish, or School System. Re-employment is permitted only if the change is not part of a continuous pattern.

d. Change of Certification Areas. Re-employment is permitted with assurance that the requirements for continued employment under this policy will be met.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

Carole Wallin  
Executive Director

9509#073

## RULE

### Board of Elementary and Secondary Education

#### Teacher Certification (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the State Board of Elementary and Secondary Education adopted a revision to the board's policy on suspension and revocation of a teaching certificate. This is an amendment to the Administrative Code, Title 28 as noted below:

#### Title 28 EDUCATION

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

\* \* \*

##### E. Revocation, Suspension, Denial and Reinstatement of Certificates/Permits for Criminal Offenses

1. A Louisiana teaching certificate may be revoked, suspended or denied if the individual holding the certificate has been convicted of any felony offense whatsoever or of a misdemeanor offense that involves any of the following:

a. sexual or physical abuse of a minor child or other illegal conduct with a minor child;

b. the possession, use or distribution of any illegal drug as defined by Louisiana or federal law.

2. For purposes of this policy, the term "teaching certificate" encompasses any form of teacher certificate or permit. "Teacher" shall encompass any person holding a teaching certificate or permit. "Felony" shall mean any state or federal crime, the conviction for which carries the potential for a sentence of death or imprisonment at hard labor. "Conviction" or "convicted" includes criminal proceedings in which the accused pleads guilty or no contest as well as those proceedings that are tried and result in a judgment of guilty.

A conviction that results in a suspended sentence pursuant to Louisiana Code of Criminal Procedure, Articles 893 or 894, shall nonetheless be treated as a conviction for purposes of revocation, suspension and denial.

3. Upon receiving notice that a teacher has been convicted of a felony offense or a misdemeanor offense of the type described above, the State Department of Education shall immediately attempt to contact the teacher to let him or her know that the department has information of the criminal conviction and that the department is proceeding under the policy set forth herein to consider revocation, suspension, or denial of the certificate. The teacher shall be given a chance to rebut the charge that he or she has been convicted of a criminal offense within 10 days of notification. This initial opportunity for the teacher to be heard is intended as a preliminary check against mistaken identity or incorrect information and may be conducted in an informal manner such as through a phone conversation or through correspondence. If, after hearing from the teacher and seeking any corroborative information that might be appropriate, the department determines that there are reasonable grounds to believe that the teacher has been convicted of a felony or misdemeanor of the type described above, then the department shall suspend the teacher's certificate pending review and further action by the board. The board and the teacher shall be promptly notified that the teacher's certificate has been suspended pending board action.

If the teacher cannot be reached by the department, or if the teacher does not respond to the department's attempt at contacting him or her, the department shall order the certificate suspended pending action by the board and shall so notify the teacher and the board.

4. Upon order of the board, the teacher shall be notified of a date, time and place of hearing to consider whether the certificate should be revoked, suspended, or denied. The notice shall be sent by certified mail; and it shall inform the teacher of the purpose of the hearing, describe the conviction which prompted the hearing, and apprise the teacher that the hearing will be his or her opportunity to present evidence through witnesses and exhibits to rebut the charge that the teacher has been convicted of a felony or of a misdemeanor of

the type described above.

5. The board committee assigned to hear the matter shall make a recommendation to the full board regarding whether the teacher's certificate should be revoked, suspended or denied. The board shall then issue an order which shall be promptly transmitted to the individual affected. When the board orders revocation, suspension, or denial of a certificate, the Department of Education shall provide notice of such action to the LEAs in the state of Louisiana. The department shall also notify the superintendent of the employee's school district of any violations of regulations, laws or standards occasioned by the continued employment and payment of an individual whose certificate has been suspended, revoked, or denied. The department shall make recommendations to the board for sanctions against the local school system pursuant to appropriate state statutes.

6. A teacher whose certificate has been revoked, suspended, or denied under the provisions of this Part may apply for reinstatement only after three years or more have passed from the effective date of the last action taken by the board to revoke, suspend or deny the certificate. Documentation must be submitted by the teacher to show evidence of rehabilitation.

However, the board may by order suspending a certificate for a period of time provide that the certificate becomes reinstated at the end of the term of suspension. Furthermore, if the conviction upon which a teacher's certificate has been revoked or suspended, is reversed, the teacher may apply to the board for reinstatement. To be eligible to be considered for reinstatement, the applicant shall provide evidence that his record has been expunged, if applicable. The board may order a hearing to determine if the former teacher has rehabilitated himself sufficiently to warrant reinstatement of the teaching certificate.

NOTE: The Administrative Procedure Act shall be applied where applicable. [R.S. 49:950 et seq.]

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 21: (September 1995).

Carole Wallin  
Executive Director

9#074

**RULE**

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

**Control of Emissions and Emission Standards  
(LAC 33:III.907) (AQ121)**

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 amended the Air Quality Division regulations, LAC 33:III.907 (AQ121).

LAC 33:III.907 which is entitled "Emissions Resulting in Undesirable Levels Not Allowed," is rescinded because it has been found vague and unenforceable, by the court, as it is written.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 9. General Regulations on Control of Emissions and Emission Standards**

**§907. Repealed (Reserved)**

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), repealed LR 21: (September 1995).

James B. Thompson, III  
Assistant Secretary

9509#049

**RULE**

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

**Emissions of Organic Compounds from Industrial  
Wastewater (LAC 33:III.2153)(AQ106)**

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 amended the Air Quality Division Regulations, LAC 33:III.Chapter 21 (AQ106).

The rule relates to the handling of volatile organic compound-laden industrial wastewater utilizing reasonably available control technology (RACT). It applies to sources in the ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that emit at least 50 tons per year of volatile organic compounds.

This action is required as a result of the federal Clean Air Act Amendments of 1990, section 182(c) and by the directives of the United States Environmental Protection Agency.

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

Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air

Chapter 21. Control of Emissions of Organic Compounds

Subchapter M. Limiting Volatile Organic Compound Emissions From Industrial Wastewater

§2153. Limiting Volatile Organic Compound Emissions From Industrial Wastewater

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

*Affected Source Category*—any of the following source categories located in the ozone nonattainment parishes classified as marginal or above:

- a. organic chemicals, plastics, and synthetic fibers manufacturing industry under Standard Industrial Classification (SIC) codes 2821, 2823, 2824, 2865, and 2869;
- b. pesticides manufacturing industry under SIC code 2879;
- c. pharmaceutical manufacturing industry under SIC codes 2833, 2834, and 2836; and
- d. hazardous waste treatment, storage, and disposal facilities industry under SIC codes 4952, 4953 and 4959.

*Affected Volatile Organic Compounds (VOC) Wastewater*—a VOC wastewater stream from an affected source category with either a VOC concentration greater than or equal to 10,000 parts per million by weight (ppmw) or a VOC concentration greater than or equal to 1000 ppmw and a flow rate greater than or equal to 10 liters per minute (2.64 gallons per minute), as determined in accordance with Subsection H of this Section.

*Components*—includes, but is not limited to, wastewater storage tanks, surface impoundments, drains, junction boxes, lift stations, weirs, and oil-water separators.

*Continuously Monitor*—measure at least once every 15 minutes.

*Maintenance Wastewater*—wastewater generated by the draining of process fluid from components in the facility prior to or during maintenance activities. Maintenance wastewater can be generated during planned or unplanned shutdowns and periods that are not associated with shutdowns. Examples of activities that can generate maintenance wastewater include descaling of heat exchanger tube bundles, cleaning of distillation column traps, draining of low legs and high point bleeds, draining of pumps, and draining of unrecovered portions of a facility prior to repair.

*Plant*—all facilities located within a contiguous area, under common control, and identified by the Plant ID number as assigned by the department, within the parish in which the plant is primarily located, for inclusion in the emission inventory system (EIS).

*Point of Generation*—the location where a VOC wastewater stream exits a process unit.

*Properly Operated Biotreatment Unit*—a suspended growth process that generates and recycles biomass to maintain

biomass concentrations in the treatment unit. The average concentration of suspended biomass maintained in the aeration basin of a properly operated biotreatment unit shall equal or exceed 1.0 kilogram per cubic meter (kg/m<sup>3</sup>), measured as total suspended solids.

*Volatile Organic Compounds (VOC) Wastewater*—water which, as part of a facility process, has come into contact with VOC and is intended for treatment, disposal, or discharge without further use in a process unit. Examples of potential VOC wastewater are: product or feed tank drawdown; water formed during a chemical reaction; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling a vacuum on vessels. Examples of water streams that are not VOC wastewater are: water being used within a facility process; rainfall runoff; fire, safety, and other exigency-use water; spills; once-through noncontact cooling water; cooling tower blowdown; and maintenance wastewater. (The VOC content of noncontact cooling water shall be minimized through a leak detection program.)

*Wet Weather Retention Basin*—an impoundment or tank that is used to store rainfall runoff that would exceed the capacity of the wastewater treatment system until it can be returned to the wastewater treatment system or, if the water meets the applicable discharge limits, discharged without treatment. These units may also be used to store wastewater during periods when the wastewater treatment system is shut down for maintenance or emergencies.

B. Control Requirements. Any person who is the owner or operator of an affected source category within a plant shall comply with the following control requirements. Any component of the wastewater storage, handling, transfer, or treatment facility, if the component contains an affected VOC wastewater stream, shall be controlled in accordance with either Subsection B.1 or 2 of this Section, except for a properly operated biotreatment unit and a wet weather retention basin. The control requirements shall apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit, disposed of in an underground injection well, incinerated, or treated to reduce the VOC content of the wastewater stream by 90 percent (biotreatment unit—85 percent) and also reduce the VOC content of the same wastewater stream to less than 1000 ppm by weight. For wastewater streams which are combined and then treated to remove VOC, the amount of VOC to be removed from the combined wastewater stream shall be at least equal to the total amount of VOC that would be removed from each individual stream so that they meet the reduction criteria mentioned above in this Subsection.

1. The wastewater component shall meet the following requirements:

- a. all components shall be fully covered or be equipped with water seal controls;
- b. all openings shall be closed and sealed, except when the opening is in actual use for its intended purpose or the component is maintained at a pressure less than atmospheric

pressure;

c. all liquid contents shall be totally enclosed;

d. if any cover, other than a junction box cover, is equipped with a vent, the vent shall be equipped with either a control device or a vapor recovery system which maintains a minimum control efficiency of 90 percent VOC removal or a VOC concentration of less than or equal to 50 parts per million by volume (ppmv) (whichever is less stringent) or a closed system which prevents the flow of VOC vapors from the vent during normal operation. Any junction box vent shall be equipped with a vent pipe at least 90 centimeters (cm) (36 inches) in length and no more than 10.2 cm (4.0 inch) in diameter;

e. all gauging and sampling devices shall be vapor-tight except during gauging or sampling;

f. all seals and cover connections shall be maintained in proper condition. For purposes of these regulations, "proper condition" means that covers shall have a tight seal around the edge and shall be kept in place except as allowed herein, that seals shall not be broken or have gaps, and that sewer lines shall have no visible gaps or cracks in joints, seals, or other emission interfaces;

g. if any seal or cover connection is found not to be in proper condition, the repair or correction shall be completed as soon as possible but within 15 days of detection, unless the repair or correction is technically impossible without requiring a unit shutdown, in which case the repair or correction shall be made before the end of the next unit shutdown;

h. fixed roof wastewater tanks that meet the following conditions do not require that vents be equipped with control devices or recovery devices as long as the tanks are not used for mixing (by means of a process that results in splashing, slothing, or visible turbulent flow on the surface during normal process operations), heating (except during conditions requiring that the material be heated to prevent freezing or to maintain adequate flow conditions), or treating with an exothermic reaction:

i. have a capacity less than 250 gallons at any vapor pressure;

ii. have any capacity and a vapor pressure less than .5 psia; or

iii. have a capacity greater than 250 gallons and less than 40,000 gallons and a vapor pressure greater than 1.5 psia (requires submerged fill); and

i. for wastewater tanks that would normally be required to have a control device or recovery device, these devices shall not be required to meet the 90 percent removal efficiency or 50 ppmv concentration during periods of malfunction or maintenance on the devices for periods not to exceed 336 hours per year.

2. Any wastewater tank equipped with a floating roof or internal floating cover shall meet the following requirements:

a. all openings in an internal or external floating roof, except for automatic bleeder vents and rim space vents, shall provide a projection below the liquid surface and be equipped with a cover, seal, or lid. Any cover, seal, or lid shall be in closed (i.e., no visible gap) position at all times except when the opening is in actual use for its intended purpose;

b. automatic bleeder vents shall be closed at all times except when the roof is floated off or landed on the roof leg supports;

c. rim vents, if provided, shall be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting;

d. any emergency roof drain shall be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening;

e. there shall be no visible holes, tears, or other openings in any seal or seal fabric;

f. secondary seals shall be the rim-mounted type (i.e., the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch (0.32 cm) in width between the secondary seal and tank wall shall be no greater than 1.0 inch<sup>2</sup> per foot (21 cm<sup>2</sup> per meter) of tank diameter; and

g. if any seal is found not to meet the requirements of Subsection B.2 of this Section, the tank shall be emptied and/or the repairs shall be completed within 45 days of identification in any inspection required by Subsection D.2 of this Section. If the tank cannot be emptied or the repair cannot be completed within 45 days, a 30-day extension may be requested from the administrative authority\*.

3. Any wastewater component that becomes subject to this Section by exceeding the provisions of Subsection G of this Section, or becoming an affected VOC wastewater stream as defined in Subsection A of this Section, will remain subject to the requirements of this Section. This will be the case even if the component later falls below the above-mentioned provisions unless and until emissions are reduced to a level at or below the controlled emissions level existing prior to the implementation of the project by which throughput or emission rate was reduced and less than the applicable exemption levels in Subsection G of this Section, and if the following conditions are met:

a. the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by LAC 33:III.501.B. If a standard exemption is available for the project, compliance with this Subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

b. if authorization by permit or standard exemption is not required for this project, the owner or operator has given the department 30 days notice of the project in writing.

C. Alternate Control Requirements. Alternate methods of demonstrating and documenting compliance with applicable control requirements or exemption criteria may be approved by the administrative authority\* if emission reductions are demonstrated to be substantially equivalent.

D. Inspection and Monitoring Requirements. Any person who is the owner or operator of a facility subject to the control requirements of Subsection B of this Section, shall comply with the following inspection and monitoring requirements:

1. all seals and covers used to comply with Subsection B.1 of this Section shall be inspected according to the

following schedules to ensure compliance with Subsection B.1.f and g of this Section:

a. initially and semiannually thereafter to ensure compliance with Subsection B.1.f of this Section; and

b. upon completion of repair to ensure compliance with Subsection B.1.f and g of this Section;

2. floating roofs and internal floating covers used to comply with Subsection B.2 of this Section shall be subject to the following requirements and all secondary seals shall be inspected according to the following schedules to ensure compliance with Subsection B.2.e of this Section:

a. if the primary seal is vapor-mounted, the secondary seal gap area shall be physically measured annually to ensure compliance with Subsection B.2.f of this Section;

b. if the tank is equipped with a metallic type shoe or liquid-mounted primary seal, compliance with Subsection B.2.f of this Section shall be determined annually by visual inspection; and

c. all secondary seals shall be visually inspected semiannually to ensure compliance with Subsection B.2.e of this Section; and

3. monitors shall be installed and maintained as required by this Section to measure operational parameters of any emission control device or other device installed to comply with Subsection B of this Section. Such monitoring and parameters shall be sufficient to demonstrate proper functioning of those devices and be conducted as follows:

a. for an enclosed combustion device (including, but not limited to, a thermal incinerator, boiler, or process heater), continuously monitor and record the temperature of the gas stream either in the combustion chamber or immediately downstream before any substantial heat exchange;

b. for a catalytic incinerator, continuously monitor and record the temperature of the gas stream immediately before and after the catalyst bed;

c. for a condenser (chiller), continuously monitor and record the temperature of the gas stream at the condenser exit;

d. for a carbon adsorber, continuously monitor and record the VOC concentration of the exhaust gas stream to determine if breakthrough has occurred. If the carbon adsorber does not regenerate the carbon bed directly in the control device (e.g., a carbon canister), the exhaust gas stream shall be monitored at intervals no greater than daily. As an alternative to conducting monitoring, the carbon may be replaced with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorber. For pressure-swing adsorption (PSA) systems, as an alternative to monitoring the VOC concentration of the exhaust gas stream, the temperature of the bed near the inlet and near the outlet may be continuously monitored and recorded. Proper operation shall be evidenced by a uniform pattern of temperature increases and decreases near the inlet and a fairly constant temperature near the outlet;

e. for a flare, continuously monitor for the presence of a flare pilot light using a thermocouple or any other equivalent device to detect the presence of a flame;

f. for a steam stripper, continuously monitor and record the steam flow rate, the wastewater feed mass flow rate, the wastewater feed temperature, and the condenser vapor outlet temperature;

g. in lieu of the monitoring and parameters listed in Subsection D.3.a-f of this Section, other monitoring and parameters may be approved or required by the administrative authority\*; and

h. monitoring of the following units is not required:

i. a boiler or process heater with a design heat input capacity of 44 megawatts or greater;

ii. a boiler or process heater into which the emission stream is introduced with the primary fuel; and

iii. a boiler or process heater burning hazardous waste for which the owner or operator:

(a). has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 256 subpart H; or

(b). has certified compliance with the interim status requirements of 40 CFR part 266 subpart H.

E. Approved Test Methods. Compliance shall be determined by applying the following test methods, as appropriate:

1. for determination of gas flow rate - Test Methods 1-4 (LAC 33:III.6001-6013);

2. for determination of gaseous organic compound emissions by gas chromatography - Test Method 18 (LAC 33:III.6071);

3. for determination of VOC leaks and for monitoring a carbon canister in accordance with Subsection D.3 of this Section - Test Method 21 (LAC 33:III.6077);

4. for determination of total gaseous nonmethane organic emissions as carbon - Test Method 25 (LAC 33:III.6085);

5. for determination of total gaseous organic concentration using a flame ionization or a nondispersive infrared analyzer - Test Method 25A or 25B (LAC 33:III.6086 or 6087);

6. for determination of VOC concentration of wastewater samples - Test Method 5030 (purge and trap) followed by Test Method 8015 with a DB-5 boiling point (or equivalent column) and flame ionization detector, with the detector calibrated with benzene (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846, and 40 CFR part 261); Test Methods 3810, 5030 (followed by 8020), 8240, 8060, and 9060 (SW-846 and 40 CFR part 261); Test Methods 601, 602, and 624 (40 CFR part 136); Test Method 5310(B) (Standard Methods 17th Edition); Test Method 25D (40 CFR part 60); Test Method 305 (40 CFR part 63); or Test Method 415.1 (Methods for Chemical Analysis of Water and Wastes - EPA-600/4-79-020);

7. for determination of true vapor pressure - American Society for Testing and Materials Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989. In lieu of testing, vapor pressure data or Henry's Law Constants published in standard reference texts or by the U.S. EPA may be used; and

8. alternative test methods or minor modifications to these test methods as approved by the administrative authority\*.

F. Recordkeeping Requirements. Any person who is the owner or operator of an affected source category within a plant shall comply with the following recordkeeping requirements:

1. complete and up-to-date records shall be maintained as needed to demonstrate compliance with Subsection B of this Section. These shall be sufficient to demonstrate the characteristics of wastewater streams and the qualification for any exemptions claimed under Subsection G of this Section;

2. records shall be maintained of the results of any inspection or monitoring conducted in accordance with the provisions specified in Subsection D of this Section;

3. records shall be maintained of the results of any testing conducted in accordance with the provisions specified in Subsection E of this Section;

4. records shall be maintained of the dates and reasons for any maintenance and repair of the required control devices and duration of any VOC emissions during such activities; and

5. all records shall be maintained at the plant for at least two years and be made available upon request to representatives of the department, U.S. Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area.

#### G. Exemptions

1. Any affected plant with an annual VOC loading in wastewater, as determined in accordance with Subsection H of this Section, less than or equal to 10 megagrams (Mg) (11.03 tons) shall be exempt from the control requirements of subsection B of this Section.

2. At any affected plant with an annual VOC loading in wastewater, as determined in accordance with Subsection H of this Section, greater than 10 Mg (11.03 tons), any person who is the owner or operator of the affected source category may be exempt from the control requirements of Subsection B of this Section on one or more affected VOC wastewater streams for which the sum of the annual VOC loading in wastewater for all of the exempted streams is less than or equal to 10 Mg (11.03 tons).

3. If compliance with the control requirements of subsection B of this Section would create a safety hazard in a component of a wastewater storage, handling, transfer, or treatment facility, the owner or operator may request the administrative authority\* to exempt that component from the control requirements of Subsection B of this Section. The administrative authority\* shall approve the request if justified by the likelihood and magnitude of the potential injury and if the administrative authority\* determines that reducing or eliminating the hazard is technologically or economically unreasonable based on the emissions reductions that would be achieved.

4. Wastewater components are exempt from the control requirements of Subsection B of this Section if the overall control of VOC emissions from the wastewater of affected source categories is at least 90 percent less than the 1990 baseline emissions inventory, and the following requirements are met:

a. the owner or operator of the wastewater components shall submit a control plan, no later than 180 days after promulgation of this rule, to the department and the appropriate regional office which demonstrates that the overall control of VOC emissions from wastewater at the affected source categories will be at least 90 percent less than the 1990 baseline emissions inventory by November 15, 1996. At a minimum, the control plan shall include the applicable emission point number (EPN); the plant identification number (PIN); the calendar year 1990 emission rates of wastewater from affected source categories (consistent with the 1990 baseline emissions inventory); a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility; and the projected calendar year 1996 VOC emission rates. The projected 1996 VOC emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory;

b. in order to maintain exemption status under this Subsection, the owner or operator shall submit an annual report no later than March 31 of each year, starting in 1997, to the department which demonstrates that the overall control of VOC emissions at the affected source category from which wastewater is generated during the preceding calendar year is at least 90 percent less than the 1990 baseline emissions inventory. At a minimum, the report shall include the EPN; the PIN; the throughput of wastewater from affected source categories; a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility; and the VOC emission rates for the preceding calendar year. The emission rates for the preceding calendar year shall be calculated in a manner consistent with the 1990 baseline emissions inventory; and

c. all representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions, unless the owner or operator of the wastewater component submits a revised control plan to the department within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions from wastewater at the affected source categories continues to be at least 90 percent less than the 1990 baseline emissions inventory. The emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory.

5. The owner or operator of wastewater components subject to the control requirements of Subsection B of this Section may request an exemption determination from the administrative authority\* if the overall control of VOC emissions from wastewater at the affected source categories is at least 80 percent less than the 1990 baseline emissions inventory, and the following requirements are met:

a. each request for an exemption determination shall be submitted to the department. Each request shall demonstrate that the overall control of VOC emissions from wastewater at the affected source categories will be at least 80 percent less than the 1990 baseline emissions inventory. The request shall

include the applicable EPN; the PIN; the calendar year throughput of wastewater from affected source categories; the VOC emission rates; and a plot plan showing the location, EPN, and PIN associated with a wastewater storage, handling, transfer, or treatment facility. The emission rates shall be calculated in a manner consistent with the 1990 baseline emissions inventory;

b. the administrative authority\* shall approve the exemption for specific wastewater components if it is determined to be economically unreasonable to control the associated emissions subject to these regulations, all reasonable controls are applied, and the overall control of VOC emissions from wastewater at the affected source categories is at least 80 percent less than the 1990 baseline emissions inventory. The administrative authority\* may subsequently direct the holder of an exemption under this Section to reapply for the exemption if there is good cause to believe that it has become economically reasonable to meet the requirements of Subsection B of this Section. Within three months of an administrative authority\* request, the holder of an exemption under this Section shall reapply for the exemption. If the reapplication for an exemption is denied, the holder of the exemption shall meet the requirements of Subsection B of this Section as soon as possible, but no later than two years from the date of denial; and

c. all representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the wastewater component submits a revised control plan to the department within 30 days of the change. All control plans and reports shall include documentation that the overall reduction of VOC emissions at the plant from wastewater affected source categories continues to be at least 80 percent less than the 1990 baseline emissions inventory.

6. Any component of a wastewater storage, handling, transfer, or treatment facility that is subject to the Hazardous Organic National Emission Standards for Hazardous Air Pollutants (HON) wastewater provisions or National Emission Standards for Hazardous Air Pollutants (NESHAPS) Subpart FF (benzene waste operations) or Subpart YYY (Synthetic Organic Chemical Manufacturing Industry (SOCMI) wastewater provisions) is exempt from the provisions of this Section.

7. Equipment that is installed temporarily or is portable (such as containers) is exempt from the provisions of this Section.

8. Unless specifically required, any component of a wastewater storage, handling, transfer, or treatment facility to which the requirements of this Section apply or which is specifically exempted shall be exempt from the requirements of any other portion of this Chapter.

9. Any wastewater sources identified in an enforceable commitment of the U.S. Environmental Protection Agency Early Reductions Program which grants a six-year compliance extension to otherwise applicable standards issued under

section 112(d) of the Clean Air Act are exempted from the provisions of this Chapter.

#### H. Determination of Wastewater Characteristics

1. The characteristics shall be determined at a location between the point of generation and the point before which the wastewater stream is exposed to the atmosphere, treated for VOC removal, or mixed with another wastewater stream. For wastewater streams which, prior to November 15, 1993, were either actually being mixed or construction had commenced which would result in the wastewater streams being mixed, this mixing shall not establish a limit on where the characteristics may be determined.

2. The flow rate of a wastewater stream shall be determined on the basis of an annual average by one of the following methods:

a. the highest annual quantity of wastewater managed, based on historical records for the most recent five years of operation, or for the entire time the wastewater stream has existed if less than five years but at least one year;

b. the maximum design capacity of the wastewater component;

c. the maximum design capacity to generate wastewater of the process unit generating the wastewater stream; or

d. measurements that are representative of the actual, normal wastewater generation rates.

3. The VOC concentration of a wastewater stream shall be determined on the basis of a flow-weighted annual average by one of the following methods or by a combination of the methods. If the administrative authority\* determines that the VOC concentration cannot be adequately determined by knowledge of the wastewater or by bench-scale or pilot-scale test data, the VOC concentration shall be determined in accordance with Subsection H.3.c of this Section. A VOC with a Henry's Law Constant less than  $7.5 \times 10^{-5}$  atm-m<sup>3</sup>/mole at 25°C (and compounds having normal boiling points of 350°F (177°C) or greater) shall not be included in the determination of VOC concentration.

a. Knowledge of the Wastewater. Sufficient information shall be used to document the VOC concentration. Examples of information include material balances, records of chemical purchases, or previous test results.

b. Bench-scale or Pilot-scale Test Data. Sufficient information shall be used to demonstrate that the bench-scale or pilot-scale test concentration data are representative of the actual VOC concentration.

c. Measurements. Collect a minimum of three representative samples from the wastewater stream and determine the VOC concentration for each sample in accordance with Subsection E of this Section. The VOC concentration of the wastewater stream shall be the flow-weighted average of the individual samples.

4. The annual VOC loading in wastewater for a wastewater stream shall be the annual average flow rate determined in Subsection H.2 of this Section multiplied by the annual average VOC concentration determined in Subsection H.3 of this Section.

5. The annual VOC loading in wastewater for an affected source category shall be the sum of the annual VOC loading



n wastewater for each affected VOC wastewater stream.

I. Parishes and Compliance Schedules. For the affected facilities in the ozone nonattainment parishes classified marginal or above, any person who is the owner or operator of an affected source category within a plant shall be in compliance with this rule no later than November 15, 1996. If an additional affected VOC wastewater stream is generated as a result of a process change, the wastewater shall be in compliance with this Section upon initial startup or by November 15, 1998, whichever is later, unless the owner or operator demonstrates to the administrative authority\* that achieving compliance will take longer. If this demonstration is made to the administrative authority's\* satisfaction, compliance shall be achieved as expeditiously as practicable, but in no event later than three years after the process change. An existing wastewater stream that becomes an affected VOC wastewater stream due to a process change must be in compliance with this Section as expeditiously as practicable, but in no event later than three years after the process change.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 0:2054.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21: (September 1995).

James B. Thompson, III  
Assistant Secretary

509#052

## RULE

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

#### Glycol Dehydrators (LAC 33:III.2116)(AQ118)

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 amended the Air Quality Division Regulations, LAC 33:III.2116 (AQ118).

The amendment to the glycol dehydrator rule clarifies the requirement for owners and operators of existing glycol dehydrators to install control devices. Secondly, the recordkeeping and reporting requirements are being changed to be more consistent with other areas of air regulations. Finally, minor editorial changes are proposed in order to improve the clarity of the rule.

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

## Title 33 ENVIRONMENTAL QUALITY

### Part III. Air

#### Chapter 21. Control of Emission of Organic Compounds Subchapter A. General

##### §2116. Glycol Dehydrators

\* \* \*

[See Prior Text in A-A.2]

B. Requirements. Any glycol dehydrator not exempt under Subsection C of this Section shall have a control device with the following efficiency:

1. an existing glycol dehydrator, constructed prior to October 20, 1994, shall:

a. demonstrate to the administrative authority, using methods found in Subsection D of this Section, a 70 percent or greater reduction of still-column emissions; or

b. if the control device is a condenser, annually achieve an average final exhaust temperature less than 110°F;

2. a new glycol dehydrator, constructed on or after October 20, 1994, and not subject to LAC:33.III.2115 or Chapter 51, shall ensure an 85 percent or greater reduction of still-column emissions using approved methods found in Subsection D of this Section; and

3. a glycol dehydrator using a flare or other combustion device as a control device shall be deemed to have equivalent efficiencies to the control efficiencies of Subsection B.1.a and 2 of this Section provided the flare or other combustion device is permitted in accordance with LAC 33:III.Chapter 5. Glycol dehydrators using a flare as a control device shall ensure destruction of emissions to the flare stack by maintaining the heat content of the flare gas above 300 BTU/scf and by documenting daily visual observations of the continuous presence of a flame.

\* \* \*

[See Prior Text in C-C.1]

2. the owner can demonstrate to the administrative authority, using method or methods found in Subsection D of this Section, that the total uncontrolled VOC emissions from the glycol dehydrator are not in excess of nine tons per year. Once the glycol dehydrator becomes an affected unit, it does not revert to an exempted unit when the emissions drop below nine tons per year, unless otherwise exempted by the approval of the administrative authority.

D. Test Methods. The emissions from glycol dehydrators affected by Subsection A of this Section shall be determined using the following methods, as appropriate:

1. rich/lean glycol mass balance using pressurized sample, for determining uncontrolled emissions;

\* \* \*

[See Prior Text in D.2-D.3]

4. conventional stack measurements using LAC 33:III:6071 and 6085 (Methods 18 and 25) for determining volatile organic compound emissions; or

\* \* \*

[See Prior Text in D.5]

E. Compliance Schedule. All facilities affected by this Section shall be in compliance as soon as practicable, but in no event later than October 20, 1996, except those facilities

required to submit a Part 70 permit application. Facilities required to submit a Part 70 permit application shall be in compliance by April 20, 1996.

\* \* \*

[See Prior Text in F]

1. a record of the results of any testing conducted in accordance with Subsection D of this Section;
2. the date of any maintenance and repair of the required control device and the duration of uncontrolled emissions during such activities;
3. glycol units subject to Subsection B.1.b of this Section shall maintain:
  - a. a record of final exhaust temperature and time observed recorded twice a week on different days during daylight hours; and
  - b. a record of all temperature exceedances greater than or equal to 120°F, the date of each temperature exceedance, and a brief explanation describing the circumstances of the temperature exceedance; and
4. glycol units for which exemptions are being claimed shall maintain:
  - a. a record of total hours of operation on an annual basis if claiming an exemption under Subsection C.1 of this Section; or
  - b. a record of actual throughput per day and the glycol circulation rate if claiming an exemption under Subsection C.2 of this Section.

\* \* \*

[See Prior Text in G-G.2]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1106 (October 1994), repromulgated LR 20:1279 (November 1994), amended LR 21: (September 1995).

James B. Thompson, III  
Assistant Secretary

9509#048

## RULE

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

#### Permitting Fees for Small Business (LAC 33:III.223)(AQ122)

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 amended the Air Quality Division Regulations, LAC 33:III.223 (AQ122).

The current rule demonstrates that the current fee schedule is based solely on SIC code, and many small businesses are charged fees that were intended for large facilities. This rule is a fee for small business, where the number of employees and emission rates are taken into consideration.

The permit fee schedule is for small businesses which have the following characteristics: has 50 employees or less; is independently owned; emits less than 5 tons\year of any single hazardous air pollutant and less than 15 tons\year of any combination of hazardous air pollutants; is not a major source; and does not incinerate, recycle, or recover any off-site hazardous, toxics, industrial, medical, or municipal waste; has an annual gross revenue that does not exceed \$5,000,000.

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

### Title 33 ENVIRONMENTAL QUALITY Part III. Air

#### Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs §223. Fee Schedule Listing

FEE SCHEDULE LISTING						
Fee Number	Air Contaminant Source	SICC	Annual Comp. Determination	New Permit Application	Modified Permit Fees	
					Major	Minor
* * *						
[See Prior Text in Fee Numbers 0010-1711]						
1720 <small>*Note 15*</small>	Small Business Sources	N/A	100.00	500.00	300.00	100.00

ADDITIONAL PERMIT FEES AND ADVF FEES		
Fee Number	Fee Description	Amount
* * *		
[See Prior Text in Fee Numbers 2000-2810]		

**Explanatory Notes for Fee Schedule**

\* \* \*

[See Prior Text in Notes 1-14]

Note 15 - Applications must be accompanied by a certificate of eligibility authorized by the department's Small Business Technical Assistance Program. Final determination of a facility's eligibility is to be made by the administrative authority or his designee and may be based on (but not limited to) the following factors: risk assessment, proposed action, location, etc. For the purpose of this Chapter a small business is a facility which: has 50 employees or fewer; is independently owned; is a small business concern as defined pursuant to the Small Business Act; emits less than 5 tons/year of any single hazardous air pollutant and less than 15 tons/year of any combination of hazardous air pollutants; emits less than 25 tons/year of any regulated pollutant; has an annual gross revenue that does not exceed \$5,000,000; is not a major stationary source; and does not incinerate, recycle, or recover any off-site hazardous, toxic, industrial, medical, or municipal waste.

\* \* \*

[See Prior Text in Notes 16-17]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1419 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21: (September 1995).

James B. Thompson, III  
Assistant Secretary

9509#050

**RULE**

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

**Reportable Quantity List for Pollutants  
(LAC 33:I.3931)(AQ123)**

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 amended the Air Quality Division Regulations, LAC 33:I.3931 (AQ123).

The existing regulation does not have a reportable quantity amount for sweetened natural gas. This rule has a de minimis quantity of 2100 lbs for sweetened natural gas as a reportable quantity for notification of unauthorized discharges.

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

**Title 33  
ENVIRONMENTAL QUALITY  
Part I. Office of the Secretary  
Subpart 2. Notification Regulations  
Chapter 39. Notification Regulations and Procedures  
for Unauthorized Discharges  
Subchapter A. General**

**§3931. Reportable Quantity List for Pollutants**

Pollutant	CAS No. <sup>1</sup>	RCRA <sup>2</sup> Waste Number	Pounds
* * *			
[See Prior Text Acenaphthene - Osmiun tetroxide]			
Other VOCs Not Listed (each VOC)			5,000
See Prior Text in 7-Oxabicyclo[2.2.1]heptane-2,3-dicaroxylie acid-Sulfuric acid, dimethyl ester]			
Sweet Pipeline Gas {Methane/Ethane}			42,000 (1,000,000 scf
* * *			
[See Prior Text in 2,4,5-T acid - Endnote@]			

APPENDIX A  
RADIATION PROTECTION PROGRAM FEE  
SCHEDULE

* * *		
[See Prior Text]		
IX. La. Radiation Protection Division Laboratory Analysis Fees		
Sample Type	Analysis	Unit Price
A. Air filters:		
1. Particulate	Gross beta	58
	Gamma	165
* * *		
[See Prior Text]		

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:183 (February 1994), LR 21: (September 1995).

James B. Thompson, III  
Assistant Secretary

9509#051

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), repromulgated LR 18:956 (September 1992), amended LR 19:624 (May 1993), LR 21:792 (August 1995), repromulgated LR 21: (September 1995).

James B. Thompson, III  
Assistant Secretary

9508#061

**RULE**

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

Fee Schedule, Appendix A (LAC 33:XV.Chapter 25)(NE16)

*(Editor's Note:* A portion of the NE16, which appeared on pages 791 through 796 of the August 20, 1995, *Louisiana Register*, is being republished to correct a typographical error.)

**Title 33  
ENVIRONMENTAL QUALITY  
Part XV. Radiation Protection  
Chapter 25. Fee Schedule**

**RULE**

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

HSWA, Non-HSWA, and RCRA Federal Package  
(LAC 33:V.Chapters 1-49) (HW47)

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 amended the Hazardous Waste Division regulations, LAC 33:V.Chapter 1, 3, 5, 7, 11, 15, 18, 25, 26, 28, 30, 31, 41, 43, 47, and 49 (HW47).

This rule is a cleanup of existing language to bring the state in line with federal regulations for the purpose of obtaining authorization from the United States Environmental Protection Agency to administer the Hazardous Waste Program. The provisions contained in this rule are not required by a single federal regulation but by many federal regulations.

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

The rule text may be viewed in its entirety at the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802, phone (504) 342-5015. Please reference document number 9509#053 (HW47).

James B. Thompson, III  
Assistant Secretary

9509#053

**RULE**

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

**National Pollutant Discharge Elimination  
System (NPDES) (LAC 33:IX.Chapter 23) (WP16F)**

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 amended the Water Pollution Control Division and Water Quality Management Division regulations, LAC 33:IX.Chapter 23 (WP16F).

The rule contains the provisions necessary to operate the federal National Pollutant Discharge Elimination System (NPDES) program. Federal language is used in the rule except for appropriate references to state laws or regulations and substitutions relative to the state instead of federal. The result will be that facilities in the state will need only one permit instead of the two currently required. The rule is required in order to assume and operate the NPDES permit program.

Copies of the full text of this final rule can be obtained from the Office of the State Register, 1051 North Third Street, Room 512, Capitol Annex Building, Baton Rouge, LA 70802.

J. Dale Givens  
Assistant Secretary

9509#069

**RULE**

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

**National Pollutant Discharge Elimination System  
(NPDES) (LAC 33:IX.711 and Chapter 23) (WP16L)**

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 amended the Water Pollution Control Division and Water Quality Management Division regulations, LAC 33:IX.711 and LAC 33:IX.Chapter 23 (WP16L).

This rule supplements the federal National Pollutant Discharge Elimination System (NPDES) program rule that is being proposed (WP16F). This rule provides consistency with what is already in place in the state permitting system and modifies the state description of secondary treatment to be consistent with the federal language. The rule is needed to (1) provide procedures for converting from a two-permit system to a single permit system, (2) maintain currently established state procedures such as public noticing draft permits, and (3) modify the state description of secondary treatment to be consistent with the federal language. Other currently established state procedures included are applicability of the rule; nondisclosure of confidential information; additional LPDES permit application requirements; enforcement actions; additional requirements for permit renewal and termination; duty to mitigate; inspection and entry; monitoring and recordkeeping; additional requirements for bypass and upset conditions; and fact sheet procedures.

Copies of this rule can be purchased at the Office of the State Register, 1051 North Third Street, Room 512, Capitol Annex Building, Baton Rouge, LA 70802.

J. Dale Givens  
Assistant Secretary

9509#068

**RULE**

**Office of the Governor  
Office of Veterans Affairs**

**Veterans' Homes Housing Policy (LAC 4:VII.957)**

The Office of Veterans Affairs hereby adopts rules establishing policies, procedures, and responsibilities relative to employees eligible to reside in Louisiana State Veterans' Homes housing quarters.

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 9. Veterans Affairs**

**Subchapter D. Louisiana State Veterans' Homes**

**§957. Housing Policy**

A. Purpose. This policy establishes policies, procedures, and responsibilities relative to State Veterans' Homes employee housing quarters.

B. Applicability. This policy applies to all employees who are eligible to reside in State Veterans' Home quarters. All state homes are required to provide occupants with a occupancy handbook.

C. General. All employee occupants, their dependents, and guests are expected to maintain high standards in their

personal conduct. The appearance of their quarters and surrounding grounds areas must be such that it reflects favorable on the occupants, the State Veterans' Home, and the Office of Veterans Affairs.

#### D. Responsibilities

1. The executive director, with the approval of the Veterans Affairs Commission, has responsibility for establishing and enforcing the departmental housing policy, in compliance with all applicable federal and state laws, rules and regulations.

2. The home administrator has staff responsibilities for the overall supervision of housing operations and is responsible for assignment/termination of quarters in accordance with the rules and regulations established by the Department of Veterans Affairs.

3. The assistant home administrator has direct responsibility for all housing operations and is principal staff advisor on housing matters. Specific functions include, but are not limited to:

a. inspection of State Veterans' Home housing by appointment on a semi-annual basis. Written reports of findings will be maintained on file in the building maintenance superintendent's office. In instances where there is obvious neglect or abuse, the occupants will be advised to take corrective action. If the occupant fails to do so in a reasonable amount of time as determined by the assistant home administrator, an assessment and/or recommendation for eviction will be in order;

b. counseling State Veterans' Home housing occupants as required on standards of conduct, care of property, and availability of assistance in resolving complaints.

4. The building maintenance superintendent is responsible for assisting with the semi-annual inspection of family quarters and following up with the necessary maintenance as required.

5. The property control officer is responsible for conducting a complete inventory of state property in family quarters during the scheduled semi-annual inspections. Results of the inventory will be recorded and filed with the inspection report in the building maintenance superintendent's office.

6. Occupant/employee is responsible for the actions of their dependents who reside with them, regardless of age. In addition, he/she is directly responsible for the actions of guests and domestic employees. He/she will be held monetarily liable for any damages to state property that are caused due to carelessness or neglect. Every effort must be made to eliminate friction and unpleasant situations by avoiding arguments, criticism, and petty differences. Specific occupant responsibilities are contained in the housing handbook.

#### E. Repair and Maintenance of Quarters

1. Procedures applicable to occupants for maintaining their assigned quarters in an acceptable state are contained in the applicable State Veterans' Home handbook.

2. Occupancy of State Veterans' Home quarters carries the responsibility and self-reliance for the occupant to accomplish simple handyman type maintenance. This would include those jobs which would normally be accomplished by a prudent homeowner to keep maintenance costs at a minimum and to preserve the home. Accordingly, occupants are

required to participate in self-help programs in their quarters and on the surrounding grounds.

#### F. Eligibility for Occupancy of State Veterans' Home Quarters

1.a. Based on the availability of quarters of sufficient space to adequately accommodate the size and composition of the applicable employee's family, the following key positions shall have priority to occupy the quarters. Each occupant will be required to sign an occupancy agreement.

i. long-term care home administrator or long-term care assistant home administrator;

ii. medical director or staff physician;

iii. director of nursing/night shift registered nurse.

b. Housing granted to individuals in the above category will be considered a fringe benefit and will be included in the employee's gross income for tax purposes as required by Division of Administration, Policy and Procedure Memoranda Number 73.

2. Registered Nurses. There is an extreme shortage and competitive recruitment of employees in this category; therefore housing is authorized as an employment incentive. This housing is a fully taxable benefit and the fair market value will be included in the employee's gross income as a fringe benefit.

3. All Other Employees. Any employee is eligible to apply for state-owned housing when there is housing available. Housing assignments shall be based on title, function, and seniority of the employee. Employees in this category shall be required to pay the fair market value, utilities included.

4. The size quarters occupied is predicated on the employee's family composition and availability of quarters. Rental fees will be based on fair market value in applicable location, which will be adjusted annually by the home administrator, with the approval of the executive director.

5. Unauthorized use of quarters, such as renting space, conducting business ventures, or permitting anyone other than legal dependents or bona fide house guests to occupy quarters, is considered misuse of state property.

6. Multiple occupancy of quarters by more than one family is not authorized.

7. Visitors who are guests of occupants will be considered as guests for a limited period, generally not to exceed 90 days.

8. Live-in domestic help, e.g., maids, nurses, etc., is not permissible.

#### G. Termination of Quarters

1. Termination of State Veterans' Homes quarters will be accomplished when the occupant/employee is transferred, resigns, retires, is terminated, expires, or fails to maintain required living standards.

2. Termination of State Veterans' Homes quarters will be accomplished when it is confirmed that the occupant/employee is no longer residing in the quarters with his/her dependents.

3. Termination of quarters will be considered complete after a final inspection is conducted by the assistant home administrator, property control officer, and building

maintenance superintendent in accordance with the standards outlined in the occupancy handbook.

H. Property Accountability. Quarters occupants will be required to sign an inventory form acknowledging receipt of the state property furnished by the State Veterans' Homes. The serviceability and accountability of the property will be verified during each semi-annual inspection. Reimbursement will be made for any damage or loss to state property resulting from the occupant's negligence.

I. Pets. In the interest of all occupants of State Veterans' Homes quarters, there will be no pets of any kind authorized.

J. Alcohol and Firearms. Alcohol and firearms are normally prohibited from the grounds of state facilities. The following exceptions are hereby granted for occupants of State Veterans' Homes housing:

1. Possession and storage of firearms is permitted provided they are properly stored under lock and key.

2. Firearms may not be carried or discharged on State Veterans' Homes grounds.

3. A list of firearms and serial numbers must be provided to the assistant home administrator for retention on file.

4. Alcohol may be consumed in the immediate quarters area, but it is not authorized for consumption in any other area of the State Veterans' Homes grounds.

5. Under no circumstances will occupants of State Veterans' Homes housing serve alcoholic beverages to patients of the home.

K. Telephones. Telephone service will be an expense borne by the occupant. Under no circumstances will personal long distance calls be made at State Veterans' Homes expense.

L. Dietary Services. Employee occupants of State Veterans' Homes housing are authorized to consume meals in the homes' dietary department only during periods when they are actually on duty. Their dependents and guests are only authorized to consume meals in the dietary department on special occasions or during social functions, but will not be authorized to do so on a routine basis.

M. Fire Regulations. Occupants of State Veterans' Homes quarters are responsible for ensuring that fire regulations effected in the occupancy handbook are strictly adhered to by dependents and guests. Occupants who cause fire damage as a result of noncompliance with provisions of fire regulations will be held monetarily liable for cost of damage.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 9:254.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 21: (September 1995).

Ernie P. Broussard  
Executive Director

509#038

## RULE

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

#### EPSDT Program — Personal Care Services (PCS)

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

#### Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the coverage for EPSDT services and provides a methodology for reimbursement of Personal Care Services for EPSDT eligibles.

#### I. Amount, Duration and Scope of EPSDT Personal Care Services

A. EPSDT Personal Care Services are defined as tasks which are medically necessary as they pertain to an EPSDT eligible's physical requirements when physical limitations due to illness or injury necessitate assistance with eating, bathing, dressing, personal hygiene, bladder or bowel requirements. Personal Care Services are further defined as those which prevent institutionalization and enables the recipient to be treated on an outpatient basis rather than an inpatient basis to the extent that services on an outpatient basis are projected to be more cost effective than services provided on an inpatient basis. EPSDT Personal Care Services include the following:

1. basic personal care, toileting and grooming activities, including bathing, care of the hair and assistance with clothing;

2. assistance with bladder and/or bowel requirements or problems, including helping the client to and from the bathroom or assisting the client with bedpan routines, but excluding catheterization;

3. assistance with eating and food, nutrition, and diet activities, including preparation of meals for the recipient only;

4. performance of incidental household services essential to the client's health and comfort in her/his home. Examples of such activities are changing and washing bed linens and rearranging furniture to enable the recipient to move about more easily in his/her own home;

5. accompanying not transporting the recipient to and from his/her physician and/or medical facility for necessary medical services;

6. EPSDT Personal Care Services are not to be provided to meet childcare needs nor as a substitute for the parent in the absence of the parent;

7. PCS are not allowable for the purpose of providing respite care to the primary caregiver;

8. EPSDT Personal Care Services provided in an educational setting shall not be reimbursed if these services

duplicate services that are provided by or must be provided by the Department of Education;

9. the following services are not appropriate for personal care and are *not reimbursable as EPSDT Personal Care Services*:

- a. insertion and sterile irrigation of catheters (although changing of a catheter bag is allowable);
- b. irrigation of any body cavities which require sterile procedures;
- c. application of dressing, involving prescription medication and aseptic techniques, including care of mild, moderate or severe skin problems;
- d. administration of injections of fluid into veins, muscles or skin;
- e. administration of medicine (as opposed to assisting with self-administered medication for EPSDT eligibles over 18 years of age);
- f. cleaning of floor and furniture in an area not occupied by the recipient. *For example: cleaning entire living area if the recipient occupies only one room;*
- g. laundry, other than that incidental to the care of the recipient. *For example, laundering of clothing and bedding for the entire household, as opposed to simple laundering of the recipient's clothing or bedding;*
- h. shopping for groceries or household items other than items required specifically for the health and maintenance of the recipient, and not for items used by the rest of the household;
- i. skilled nursing services, as defined in the State Nurse Practices Act, including medical observation, recording of vital signs, teaching of diet and/or administration of medications/injections, or other delegated nursing tasks;
- j. teaching a family member or friend how to care for a patient who requires frequent changes of clothing or linens due to total or partial incontinence for which no bowel or bladder training program for the patient is possible;
- k. specialized nursing procedures such as insertion of nasogastric feeding tube, in-dwelling catheter, tracheostomy care, colostomy care, ileostomy care, venipuncture and/or injections;
- l. rehabilitative services such as those administered by a physical therapist;
- m. teaching a family member or friend techniques for providing specific care;
- n. palliative skin care with medicated creams and ointments and/or requires routine changes of surgical dressings and/or dressing changes due to chronic conditions;
- o. teaching of signs and symptoms of disease process, diet and medications of any new or exacerbated disease process;
- p. specialized aide procedures such as:
  - i) rehabilitation of the patient (exercise or performance of simple procedures as an extension of physical therapy services);
  - ii) measuring/recording patient vital signs (temperature, pulse, respirations and/or blood pressure, etc.) or intake/output of fluids;
  - iii) specimen collection;

iv) special procedures such as nonsterile dressings, special skin care (nonmedicated); decubitus ulcers; cast care; assisting with ostomy care; assisting with catheter care; testing urine for sugar and acetone; breathing exercises; weight measurement; enemas;

- q. home IV therapy;
- r. custodial care or provision of only instrumental activities of daily living tasks or provision of only one activity of daily living task;
- s. occupational therapy; speech pathology services; audiology services, respiratory therapy;
- t. personal comfort items; durable medical equipment; oxygen; orthotic appliances or prosthetic devices;
- u. drugs provided through the Louisiana Medicaid pharmacy program;
- v. laboratory services; and
- w. social worker visits.

B. Conditions for provision of EPSDT Personal Care Services are as follows:

1. the person must be a categorically eligible Medicaid recipient birth through 20 years of age (EPSDT eligible) and have been prescribed EPSDT PCS as medically necessary by a physician. To establish medical necessity the parent or guardian must be physically unable to provide personal care services to the child;

2. an EPSDT eligible must meet medical necessity criteria as established by the BHSF which shall be based on criteria equivalent to at least an Intermediate Care Facility I (ICF-I) level of care; and be impaired in at least two of daily living tasks, as determined by BHSF;

3. when determining whether a recipient qualifies for EPSDT PCS, consideration must be given not only to the type of services needed, but also the availability of family members and/or friends who can aid in providing such care. EPSDT PCS are not to function as a substitute for childcare arrangements;

4. EPSDT Personal Care Services must be prescribed by the recipient's attending physician initially and every 180 days thereafter (or rolling six months), and when changes in the Plan of Care occur. The physician should only sign a fully completed plan of care which shall be acceptable for submission to BHSF only after the physician signs and dates the form. The physician's signature must be an original signature and not a rubber stamp;

5. EPSDT Personal Care Services must be prior authorized by the BHSF or its designee. A face-to-face medical assessment shall be completed by the physician. The recipient's choice of a Personal Care Services provider may assist the physician in developing a plan of care which shall be submitted by the physician for review/approval by BHSF or its designee. The plan of care must specify the personal care service(s) to be provided (i.e., activities of daily living for which assistance is needed) and the minimum and maximum frequency and the minimum and maximum duration of each of these services. Dates of care not included in the plan of care or provided prior to approval of the plan of care by BHSF are not reimbursable. The recipient's attending physician shall review and/or modify the plan of care and sign off on it prior



to the plan of care being submitted to BHSF. A copy of the physician's prescription or referral for EPSDT PCA services must also be retained in the personal care services provider's files. A new plan of care must be submitted at least every 180 days (rolling six months) with approval by the recipient's attending physician. The plan of care must reassess the patient's need for EPSDT PCS services, including any updates to information which has changed since the previous assessment was conducted (with explanation of when and why the change(s) occurred). Revisions of the Plan of Care may be necessary because of changes that occur in the patient's medical condition which warrant an additional type of service, an increase in frequency of service or an increase in duration of service. Documentation for a revised Plan of Care is the same as for a new Plan of Care. Both a new "start date" and "reassessment date" must be established at the time of reassessment. The provider may not initiate services or changes in services under the Plan of Care prior to approval by BHSF;

6. EPSDT Personal Care Services must be provided in the recipient's home or in another location if medically necessary to be outside of the recipient's home. The recipient's home is defined as the recipient's own dwelling, an apartment, a custodial relative's home, a boarding home, a foster home, a substitute family home or a supervised living facility. Institutions such as a hospital, institution for mental diseases, nursing facility, intermediate care facility for the mentally retarded or residential treatment center are not considered a recipient's home;

7. personal Care Services must be provided by a licensed personal care services agency which is duly enrolled as a Medicaid provider. Staff assigned to provide personal care services shall not be a member of the recipient's immediate family. (Immediate family includes father, mother, sister, brother, spouse, child, grandparent, in-law or any individual acting as parent or guardian of the recipient). Personal care services may be provided by a person of a degree of relationship to the recipient other than immediate family, if the relative is not living in the recipient's home, or, if she/he is living in the recipient's home solely because her/his presence in the home is necessitated by the amount of care required by the recipient;

8. EPSDT Personal Care Services are limited to a maximum of four hours per day per recipient as prescribed by the recipient's attending physician and prior authorized by the Bureau of Health Services Financing (BHSF) or its designee. Extensions of this limit may be requested and granted if determined medically necessary by the Bureau of Health Services Financing or its designee.

#### **I. Standards for Payment**

A. EPSDT Personal Care Services may be provided only to EPSDT eligibles and only by a staff member of a licensed Personal Care Services agency enrolled as a Medicaid provider. A copy of the current PCS license must accompany the Medicaid application for enrollment as a PCS provider and additional copies of current licenses shall be submitted to the provider Enrollment thereafter as they are issued, for inclusion in the enrollment record. The provider's enrollment record

must always include a current PCS license at all times. Enrollment is limited to providers in Louisiana and out of state providers only in trade areas of states bordering Louisiana (Arkansas, Mississippi, and Texas).

B. The unit of service billed by EPSDT PCS providers shall be one-half hour, exclusive of travel time to arrive at the recipient's home. The entire 30 minutes of the unit of time shall have been spent providing services in order to bill a unit.

C. All EPSDT PCS must be prescribed by a physician at least every 180 days (rolling six months) as indicated by his/her approval on the plan of care for EPSDT PCA services.

D. EPSDT PCS shall be prior authorized by BHSF in accordance with a plan of care submitted by the provider and approved by the physician, for no more than a six-month period. Services must be reauthorized every six months and a new plan of care must be submitted with each subsequent request for approval. Amendments or changes in the plan of care should be submitted as they occur and shall be treated as a new Plan of Care which begins a new six-month service period.

E. The PCS agency is responsible for ensuring that all personal care individuals providing services meet all training requirements applicable under state law and regulations. The personal care services staff member must successfully complete the applicable examination for certification for PCS. Documentation of the personal care staff member's completion of all applicable requirements shall be maintained by the Personal Care Services provider.

F. The recipient shall be allowed the freedom of choice to select an EPSDT PCS provider.

G. Documentation for EPSDT PCS provided shall include at a minimum, the following: documentation of approval of services by BHSF or its designee; daily notes by PCS provider denoting date of service, services provided (checklist is adequate); total number of hours worked; time period worked; condition of recipient; service provision difficulties; justification for not providing scheduled services and any other pertinent information. There must be a clear audit trail between the prescribing physician, the personal care services provider agency, the person providing the personal care services to the recipient, and the services provided and reimbursed by Medicaid.

H. Agencies providing EPSDT PCS shall conform to all applicable Medicaid regulations as well as all applicable laws and regulations by federal, state, and local governmental entities regarding wages, working conditions, benefits, Social Security deductions, OSHA requirements, liability insurance, Workman's Compensation, occupational licenses, etc.

I. EPSDT Personal Care Services provided to meet childcare needs or as a substitute for the parent in the absence of the parent shall not be reimbursed.

J. EPSDT Personal Care Services provided for the purpose of providing respite to the primary caregiver shall not be reimbursed.

K. EPSDT Personal Care Services provided in an educational setting shall not be reimbursed if these services duplicate services that are provided by or must be provided by the Department of Education.

### III. Reimbursement Methodology for EPSDT PCS

EPSDT PCS shall be paid the lesser of billed charges or the maximum unit rate set by BHSF. This maximum rate was set based on the federal minimum hourly wage as of April 1, 1995, plus 22 percent for fringe benefits (insurance, workmen's compensation, unemployment, etc.); plus 24 percent for agency administrative and operating costs based on BHSF administrative and operating costs; plus a profit factor of 4 percent of the above calculated rate. This rate will be adjusted whenever the federal minimum wage is adjusted.

Rose V. Forrest  
Secretary

9509#083

#### RULE

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

**Mental Health Rehabilitation Services**

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

#### Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, will not reimburse for collateral consultation in the Mental Health Rehabilitation Program.

Rose V. Forrest  
Secretary

9509#082

#### RULE

**Department of Justice  
Consumer Protection Section**

**Unfair and Deceptive Trade Activities  
(LAC 16:III.501-515)**

The Consumer Protection Section of the Louisiana Department of Justice hereby adopts the following consumer oriented regulations. R.S. 51:1405(B) and R.S. 36:706 provide the Consumer Protection Section with the authority to promulgate rules and regulations which are consistent with provisions contained in the Louisiana Unfair and Deceptive Trade and Practices Act (R.S. 51:1401 et seq.).

The rules hereby repeal and supersede all previous rules except those rules concerning deceptive pricing which were

promulgated by this office in January of 1995. These rules will serve to update and redefine the current consumer protection regulations.

#### Title 16

#### COMMUNITY AFFAIRS

#### Part III. Consumer Protection

#### Chapter 5. Unfair and Deceptive Trade Practices

#### §501. Scope of Authority

A. These rules and regulations may be cited in abbreviated fashion as follows: LAC 16:III.Chapter 5.

B. In accordance with R.S. 51:1405(B), these rules and regulations shall not conflict with the Constitution of this state and shall be interpreted giving due consideration to the intent of the legislature as evidenced by all of the statutes of the state.

C. These rules and regulations shall be consistent with Section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C. §45 (a) (1)], as from time to time amended, any rule or regulation promulgated thereunder, and any finally adjudicated court decision interpreting the provisions of said act, rules, and regulations. This consistency shall be, therefore, the same as the Federal Trade Commission's responsibility over both:

1. anti-trust or other restraint of trade types of activities; and
2. unfair or deceptive types of activities relating to trade and commerce as it affects consumer and business interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1401 et seq.

HISTORICAL NOTE: Adopted by the Office of the Governor, Office of Consumer Protection, September, 1973, repealed and promulgated by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

#### §503. Multi-level Distribution and Chain Distributor Marketing Schemes

A. Definitions. For the purpose of this Section, the following definitions shall apply:

*Chain Distributor Scheme*—a sales device whereby a person, upon a condition that he make an investment, is granted a license or right to recruit for profit one or more additional persons who also are granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme.

*Investment*—any acquisition, for a cause or consideration other than personal services, of movable or personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities and services. It does not include real estate, securities registered in accordance with Louisiana law, or sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.

*Multi-level Distribution Scheme*—a scheme whereby goods or services are distributed through independent agents,

contractors or distributors at different levels, wherein any one level enjoys a different rate of pricing or discounting from that of any other level, and wherein participants in the marketing program may recruit other participants and wherein commissions, cross-commissions, bonuses, refunds, discounts, dividends or other consideration in the marketing program may be paid as a result of the sale of such goods and services or the recruitment, actions or performances of additional participants.

*Pyramid Sales Marketing Scheme*—the conduct of any business in trade and commerce wherein a multi-level distribution scheme or a chain distributor scheme, or a combination of these schemes, is used.

#### B. Prohibitions

1. Any marketing scheme utilizing a chain distributor scheme, as defined in this rule, is per se an unfair and deceptive trade practice, in violation of R.S. 51:1405(A).

2. It shall also be an unfair and deceptive trade practice, in violation of R.S. 51:1405(A), for any person using any pyramid sales marketing scheme to do any of the following:

a. to fail to provide in the contract of participation in bold face type of a minimum size of 10 points a statement substantially indicating that such contract may be canceled for any reason at any time by a participant upon notification in writing to the company of his election to cancel. If the participant has purchased products while the contract of participation was in effect, all products in a resalable condition in the possession of the participant shall be repurchased. The repurchase shall be at a price of not less than 90 percent of the original net cost to the participant returning such goods, taking into account any sales made by or through such participant prior to notification to the company of the election to cancel; or

b. to require participants in its marketing program to purchase products or services or pay any other cause or consideration in order to participate in the marketing program unless such products or services are in reasonable quantities in relation to the rate at which they actually sell and unless it does:

i. to repurchase all or part of any products which are in a resalable condition at a price of not less than 90 percent of the original net cost to the participant; and

ii. to repay not less than 90 percent of the original net cost of any services purchased by the participant; and

iii. to refund not less than 90 percent of any other consideration paid by the participant in order to participate in the marketing program; or

c.i. to operate or, directly or indirectly, participate in the operation of any multi-level marketing program wherein the financial gains to the participants are primarily dependent on the continued, successive recruitment of other participants and where sales to nonparticipant are not required as a condition precedent to realization of such financial gains;

ii. to offer to pay, pay, or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other cause or consideration to any participants in a multi-level marketing program solely for the

solicitation or recruitment of other participants therein; or

iii. to offer to pay, pay, or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other cause or consideration to any participants in a multi-level marketing program in connection with the sale of any product or service unless such participant performs a bona fide and essential supervisory, distributive, selling or soliciting function in the sale or delivery of such product or services to the ultimate consumer; or

iv. to offer to pay, pay, or authorize the payment of any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other cause or consideration to any participant where payment thereof is or would be dependent on the element of chance dominating over the skill or judgment of such participant, or where no amount of judgment or skill exercised by the participant has any appreciable effect upon any finder's fee, bonus, refund, override, commission, cross-commission, dividend or other cause or consideration which the participant may receive, or where the participant is without that degree of control over the operation of such plan as to enable him substantially to affect the amount of finder's fee, bonus, refund, override, commission, cross-commission, dividend or other cause or consideration which he may receive or be entitled to receive; or

d. to represent, directly or indirectly, that participants in a multi-level marketing program will earn or receive any stated gross or net amount, or represent in any manner, the past earnings of participants; provided, however, that a written or verbal description of the manner in which the marketing plan operates shall not, standing alone, constitute a representation of earnings, past or future; or

e. to represent, either directly or indirectly, that additional distributors or sales personnel are easy to secure or retain, or that all or substantially all participants will succeed; or

f. to fail to comply with all Louisiana corporation registration laws, if applicable, or, in any case, to fail to notify the Consumer Protection Section of the Louisiana Department of Justice of any of the following, prior to its doing business in this state:

i. that it will be doing business in Louisiana;

ii. each place within Louisiana where it will actually be doing business;

iii. the full name and mailing and permanent address of its authorized agent for service of process within Louisiana, which it is also required to have at all times herein;

iv. that the Consumer Protection Section of the Louisiana Department of Justice and its representatives are authorized and invited to attend any and all of its opportunity meetings, recruitment meetings, training sessions, or any other meeting wherein a prospective participant or any participant is explained the marketing system, and are authorized and invited to visit, at any reasonable time, any and all places wherein it keeps files, records, data, communications, or information and to inspect same.

C. All rules and regulations or parts thereof in conflict herewith are hereby repealed.

D. If any part of this rule is ever legally declared to be

invalid for any reason, the remainder of the rule shall continue in full force and effect, and to this end, this rule is declared to be severable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1401 et seq.

**HISTORICAL NOTE:** Adopted by the Office of the Governor, Office of Consumer Protection, September, 1973, repealed and promulgated by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

### **§505. Magazine and Periodical Subscription Service Sales Practices**

A. Prohibited magazine and periodical subscription service sales practices shall include:

1. soliciting or accepting subscriptions for magazines or other periodicals without authority to sell same or which cannot be delivered or caused to be delivered within 90 days; or
2. requiring subscribers to substitute magazines or other periodicals in the place of those originally subscribed for; or
3. substituting magazines or other periodicals for those subscribed for without the consent of the subscribers; or
4. representing, directly or by implication, that the delivery of magazines sold is guaranteed, without clearly and conspicuously disclosing the terms and conditions of such guarantee, or misrepresenting in any manner the terms and conditions of any guarantee; or
5. failing to notify a subscriber within 30 days from the date of sale of any subscription of the inability to place all or part of a subscription agreement and deliver each of the magazines or other publications subscribed for; and to offer each such subscriber the option to receive a pro rata reduction in the contract price or a full refund of the money paid for such subscription or part thereof which is undeliverable, or, with the written consent of the subscriber to substitute other publications of comparable value, in lieu thereof; or
6. failing to give clear and conspicuous oral and written notice to each subscriber that upon written request said subscriber will be entitled to a pro rata refund of monies paid or a like reduction in the contract price if he does not receive the magazine or periodicals subscribed for within 90 days of the date of sale; or
7. misrepresenting in any manner the savings which will be accorded or made available to purchasers; or
8. representing, directly or indirectly, that any salesman, agent, solicitor or employee of a magazine or periodical subscription service is primarily conducting or participating in a survey, quiz, or is engaged in any activity other than soliciting business; or misrepresenting in any manner the purpose of the call or solicitation; or
9. misrepresenting any other aspect of the contract, sale, cost or service to be provided in any manner, with the intent to induce a consumer to enter a contract or otherwise subscribe to the services offered.

B. Whoever engages in a prohibited magazine or periodical subscription sales practice violates R.S. 51:1405(A) prohibiting, inter alia, unfair and deceptive acts and practices in trade and commerce.

C. All rules and regulations or parts thereof in conflict

herewith are hereby repealed.

D. If any part of this rule is ever legally declared to be invalid for any reason, the remainder of the rule shall continue in full force and effect, and to this end, this rule is declared to be severable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1401 et seq.

**HISTORICAL NOTE:** Adopted by the Office of the Governor, Office of Consumer Protection, September, 1973, repealed and promulgated by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

### **§507. Bait Advertising**

A. Bait advertising is any representation or offer to sell any goods or services in any manner or by any means of communication, which representation has the effect of luring consumers to the location of the goods or services represented, or which induces consumers to contact the vendor or any of his agents, representatives or employees for the purpose of showing, demonstrating or selling to the consumer the goods or services represented, or where, at the time of any previously arranged meeting, any of the following acts or practices are engaged in by the vendor, his agents, representatives, or employees:

1. the refusal to show, demonstrate, or sell the goods or services represented in accordance with the terms of representation;
2. the disparagement by acts or words of the represented goods or services or the disparagement of the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it;
3. the failure to have available at all outlets listed in the representation a sufficient quantity of the goods or services to meet reasonably anticipated demands, unless the representation clearly and adequately discloses that supply is limited and/or the goods or services are available only at designated outlets;
4. the refusal to take orders for the represented goods or services to be delivered within a reasonable period of time;
5. the showing or demonstrating of goods or services which are defective, unusable or impractical for the purpose represented or implied in the representation;
6. use of a sales plan or method of compensation for salesmen or penalizing salesmen, to prevent or discourage them from selling the represented goods or services;
7. attempt, through the use of the acts or practices enumerated in Paragraphs 1-6 above, or by any other scheme, to switch consumers from buying the goods or services represented in order to sell something else at a higher price or on a basis more advantageous to the vendor.

B. Whoever engages in bait advertising violates R.S. 51:1405(A), prohibiting, inter alia, unfair or deceptive trade practices; provided further that this rule shall not operate as an exclusive definition of prohibited conduct in the area of trade and commerce, to which it applies or in any other area of trade and commerce, and shall not operate as a defense to other activity otherwise deemed to be an unfair method of competition or an unfair or deceptive act or practices in trade and commerce by this State, the Federal Trade Commission or by the courts of this state or of the United States.

C. If any part of this rule is judicially decreed to be invalid for any reason, the remainder of the rule shall continue in full force and effect, and to this end this rule is declared to be severable.

D. All rules and regulations or parts thereof in conflict herewith are hereby repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1401 et seq.

HISTORICAL NOTE: Adopted by the Office of the Governor, Office of Consumer Protection, April, 1974, repealed and promulgated by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

### §509. Deceptive Endorsements and Testimonials

A. Definition. For the purpose of this rule the following definition shall apply:

*Endorsement or Testimonial*—any message in advertising or by oral representation by the seller, his employee, or his agent, that conveys to the consumer views favorable to the product or service advertised in which the consumer may attribute to some one other than the seller. Such views may be those of an individual, group or institution.

B. It shall be an unfair and deceptive act or practice for any seller to do any of the following:

1. state or imply that a product or service is endorsed or approved by any individual, group or institution when such has not been so endorsed or approved;

2. imply or state that an endorsement is more extensive than it actually is when it has not been so endorsed or approved;

3. state or imply that a product or service is recommended by many doctors" or "approved by millions of motorists" or other claims of such similar import, or claims of endorsements from specific individuals or organizations when such product or service has not been so endorsed or approved.

C. Whoever engages in these practices violates R.S. 51:1405(A), prohibiting, inter alia, unfair and deceptive acts and practices in trade and commerce.

D. If any part of this rule is ever legally declared to be invalid for any reason, the remainder of the rule shall continue in full force and effect, and to this end, this rule is declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1401 et seq.

HISTORICAL NOTE: Adopted by the Office of the Governor, Office of Consumer Protection, July, 1975, repealed and promulgated by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

### §511. Misrepresentation of Old, Used, or Secondhand Goods

A. Definition. For the purpose of this rule the following definition shall apply:

*Old, Used, or Secondhand Merchandise*—any commodity sold in the ordinary course of trade and commerce which has been previously subjected to the use for which it was intended, provided that this Section shall not apply to undamaged merchandise returned to a seller, nor to a use which can be reasonably construed as a trial use by a prospective purchaser where the commodity does not leave the premises of the seller.

B. It shall be an unfair and deceptive act or practice for any

seller to sell merchandise which is old, used, or secondhand, in such a way that the purchaser is led to believe that such merchandise is new and unused.

C. Whoever engages in these practices violates R.S. 51:1405(A), prohibiting, inter alia, unfair and deceptive acts and practices in trade and commerce.

D. If any part of this rule is ever legally declared to be invalid for any reason, the remainder of the rule shall continue in full force and effect, and to this end, this rule is declared to be severable.

E. All rules and regulations or parts thereof in conflict herewith are hereby repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1401 et seq.

HISTORICAL NOTE: Adopted by the Office of the Governor, Office of Consumer Protection, July, 1975, repealed and promulgated by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

### §513. Imperfections, Rejects and Distressed Goods

A. Definition. For the purpose of this rule the following definition shall apply:

*Distressed Goods*—consumer goods which are defaced, scratched, dented, damaged, or have been subjected to conditions that alter their original state, such as fire damage or damage from a natural disaster.

B. It is unfair to sell or offer for sale merchandise which has imperfections, which are rejects, or which are distressed or salvaged goods without first clearly and conspicuously disclosing to all prospective purchasers thereof the imperfections and the identity, status, nature, and the fact of the rejection, distress and salvage.

C. It is unfair to sell or offer for sale merchandise which has no imperfection which is not a reject, and which is not distressed or salvaged in such a manner as to lead any prospective purchaser thereof to believe that same has imperfections, is a reject, or is distressed or salvaged and, if purchased, will, on that account, render a savings on the price of such merchandise.

D. Whoever engages in "misrepresentation of distressed goods, imperfections, and rejects" violates R.S. 51:1405(A) prohibiting, inter alia, unfair and deceptive trade practices; provided further that this rule shall not operate as an exclusive definition of prohibited conduct in the area of trade and commerce to which it applies or in any other area of trade and commerce, and shall not operate as a defense to other activity otherwise deemed to be an unfair method of competition or an unfair or deceptive act or practice in trade and commerce by the State of Louisiana, the Federal Trade Commission, or by the courts of this state or of the United States.

E. If any part of this rule is judicially decreed to be invalid for any reason, the remainder of the rule shall continue in full force and effect, and to this end this rule is declared to be severable.

F. All rules and regulations or parts thereof in conflict herewith are hereby repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1401 et seq.

HISTORICAL NOTE: Adopted by the Office of the Governor, Office of Consumer Protection, July, 1975, repealed and promulgated

by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

### §515. Charitable Solicitations

A. Definitions. For the purpose of this rule the following definitions shall apply:

*Charitable Organization*—a group which is or holds itself out to be benevolent, civic, recreational, educational, voluntary health, social service, philanthropic, fraternal, humane, patriotic, religious, or eleemosynary organization, or any person who solicits or obtains contributions solicited from the public for charitable purposes. A chapter, branch, area office, or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state, shall be a charitable organization for the purposes of this rule.

*Contributions*—the promise or grant of any money or property of any kind or value.

*Person*—any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination of them.

*Professional Solicitor*—any person who, for a financial consideration, solicits contributions for, or on behalf of, a charitable organization, whether such solicitation is performed personally or through his agents, servants, or employees or through agents, servants, or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person; or a person who plans, conducts, manages, or advises a charitable organization in connection with the solicitation of contributions. A salaried officer or salaried employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional solicitor. However, any salaried officer or salaried employee of a charitable organization that engages in the solicitation of contributions in any manner for more than one charitable organization, if a fee is charged for services to the organization other than the one that he is employed by, shall be deemed a professional solicitor.

*Religious Institutions*—for the purposes of this rule include ecclesiastical or denominational organizations, churches, or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and shall also include those bona fide religious groups which do not maintain specific places of worship. Religious institutions also include such separate groups or corporations which from an integral part of those institutions which are exempt from federal income tax as exempt organizations under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954, or of a corresponding section of any subsequently enacted Federal Revenue Act, and which are not primarily supported by funds solicited outside its own membership or congregation. Religious institutions for purposes of this rule also include such institutions soliciting contributions for construction and maintenance of a house of worship or clergyman's residence.

B. It shall be an unfair and deceptive act or practice for any person or charitable organization utilizing a professional solicitor or solicitors to do any of the following:

1. fail to annually register and submit a \$25 registration fee to the Consumer Protection Section of the Louisiana Department of Justice, at least 10 days prior to soliciting for contributions. The following information shall be included in the registration materials:

a. the name of the charitable organization and the purpose for which it was organized;

b. the principal address of the charitable organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

c. the estimated amount of funds to be raised by professional solicitors and all costs and expenses incidental thereto including all publicity costs, all overhead costs, and all salaries or fees of professional solicitors to be paid out of solicited funds;

d. whether or not the organization or any professional solicitor associated with the organization has ever been enjoined by any court from soliciting contributions;

e. the purpose or purposes for which the contributions to be solicited shall be used;

f. the name or names under which it intends to solicit contributions;

g. the name or names of the individuals or officers of the organization who shall be responsible for the disbursement of any contributions;

h. the names and addresses of all professional solicitors to be used in the solicitation drive and a copy of the contract between the charitable organization and professional solicitor;

i. whether or not the charitable organization is incorporated and, if so, the charitable organization must submit a copy of their Articles of Incorporation to the Consumer Protection Section of the Louisiana Department of Justice;

j. whether or not the charitable organization has a Federal Income Tax exemption under Section 501 of the Internal Revenue Code and, if so, the charitable organization must submit a copy of its IRS 501(c)(3) tax exempt determination letter to the Consumer Protection Section of the Louisiana Department of Justice;

k. whether or not the charitable organization has a tax exempt status in the state of Louisiana and written proof of such status;

2. misrepresent to prospective contributors or to the general public the purpose of the organization and the purpose for which funds are solicited or are to be solicited;

3. state and/or imply in news releases, brochures, advertisements, pamphlets, or such other means, or when soliciting funds, that the charitable organization is incorporated by the state of Louisiana and/or has a Federal Income Tax exemption when such is not the case.

C. The provisions of this rule shall not apply to religious institutions as defined in Subsection A of this Section, educational institutions recognized and/or approved by the State Department of Education or the appropriate state educational board, the State Department of Education or the appropriate state education board, any hospital organized under the laws of this state, or any voluntary health

organization organized under the laws of this state and/or under federal laws.

D. Whoever fails to comply with Subsection B of this Section violates R.S. 51:1405 (A), prohibiting, inter alia, unfair and deceptive acts and practices in trade and commerce.

E. If any part of this rule is ever legally declared to be invalid for any reason, the remainder of the rule shall continue in full force and effect, and to this end, this rule is declared to be severable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:1401 et seq.

**HISTORICAL NOTE:** Adopted by the Office of the Governor, Office of Consumer Protection, June, 1977, repealed and promulgated by the Department of Justice, Consumer Protection Section, LR 21: (September 1995).

David Kimmel  
Director

1509#005

## RULE

### Department of Natural Resources Office of Conservation

#### Pipeline Safety—Drug Testing/Alcohol Drug Tests Required (LAC 43:XIII.3111)

*(Editor's Note: The following Section of a rule, which appeared on pages 26 through 835 of the August 20, 1995 Louisiana Register, is being republished in its entirety to correct a codification error.)*

### Title 43

### NATURAL RESOURCES

#### Part XIII. Office of Conservation - Pipeline Safety

##### Subpart 1. General Provisions

##### Chapter 31. Drug Testing

##### 3111. Drug Tests Required

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

1. Pre-employment Testing. No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this Chapter.

2. Post-accident Testing. As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. If an employee is injured, unconscious, or otherwise unable to evidence consent to the drug test, all reasonable steps must be taken to obtain a urine sample. An operator may decide not to test under this paragraph 2 but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal

whether the performance was affected by drug use.

### 3. Random Testing

a. Except as provided in Paragraph 3.b. through d of this Subsection, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

b. The administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this Chapter. In order to ensure reliability of the data, the administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the administrator will publish in the *Federal Register* the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

c. When the minimum annual percentage rate for random drug testing is 50 percent, the administrator may lower this rate to 25 percent of all covered employees if the administrator determines that the data received under the reporting requirements of §3125 for two consecutive calendar years indicate that the reported positive rate is less than 1 percent.

d. When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §3125 for any calendar year indicate that the reported positive rate is equal to or greater than 1 percent, the administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

e. The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

f. The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this Chapter or any DOT drug testing rule.

g. Each operator shall ensure that random drug tests conducted under this Chapter are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

h. If a given covered employee is subject to random drug testing under the drug testing rules of more than one

DOT agency for the same operator, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

i. If an operator is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the operator may:

i. establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

ii. randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject.

4. **Testing Based on Reasonable Cause.** Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this Chapter, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

5. **Return to Duty Testing.** An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this Chapter and the medical review officer has determined that the employee may return to duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing without prior notice for not more than 60 months after his or her return to duty.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:135 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 21:826 (August 1995), repromulgated LR 21: (September 1995).

Ernest A. Burguières, III  
Commissioner

9509#006

## RULE

### Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Fund Administration  
(LAC 43:I. Chapter 15)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Natural Resources hereby

amends LAC 43:I.1501 et seq. regarding definitions and the filing of claims.

### Title 43 NATURAL RESOURCES Part I. Office of the Secretary Chapter 15. Administration of Fishermen's Gear Compensation Fund

#### §1501. Definitions

\* \* \*

2. **Primary Source of Income**—that source of revenue earned by a claimant from commercial fishing endeavors which is deemed by the regulatory authority to constitute a fundamental source of such claimant's annual earned income. Annual earned income shall be income earned from all sources reportable on state and federal income tax returns. Any claimant who presents satisfactory proof that at least 50 percent of his or her annual income in the year preceding the year of the claim was earned from commercial fishing endeavors shall be deemed to derive a primary source of his or her income therefrom.

3. **Satisfactory Proof**—as it relates to demonstrating a primary source of income—a certified copy of state and federal income tax returns together with related financial data. In the case of a claimant being a corporation, a certified copy of the state and federal corporate tax return shall be submitted.

\* \* \*

6. **Claimant**—any vessel owner who files a claim under the provisions of these regulations and R.S. 56:700.1-700.5.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.3.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 14:545 (August 1988), LR 21: (September 1995).

#### §1503. Geographic Boundary of Fund

A. The Fishermen's Gear Compensation Fund shall be limited to the payment of no more than two claims for damage or loss of fishing gear filed by qualified claimants during a fiscal year applicable to the department (July 1 - June 30). Claims must be received by the fund within the period indicated. A single claim may not exceed \$5,000, but in no event shall any payment of a claim exceed the amount of gross income earned by the claimant from fishing endeavors in the year preceding the claim, and shall be based on damage or loss of fishing gear due to an encounter with an obstruction in state waters located below the northern boundary of the Louisiana Coastal Zone as set forth in R.S. 49:213.4, and depicted on official maps of the state regulatory authority having jurisdiction over coastal zone management, and extending seaward to the limits of Louisiana's territorial jurisdiction.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.3.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 11:29 (January, 1987), LR 21: (September 1995).

#### §1507. Identification of Area of Obstruction

A. When an obstruction has been encountered by a qualified commercial fisherman from which encounter a claim



for damages to the fund is made, the claim shall not be accepted unless accompanied by sufficient information by which to locate the area of the obstruction. Such information shall be conveyed on forms furnished by the department when available, or otherwise in a manner sufficiently clear to be usable by the department in charting the obstruction.

No future claim shall be filed by a qualified commercial fisherman for an encounter with an obstruction at the same location reported by the fisherman on a previous claim.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.3.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21: (September 1995).

### §1509. Claims: General Form and Content

#### A.1. - 5. ...

a. the nature and extent of the damage and loss suffered; photographs of vessel damage which must show the claimed damage and the registration/documentation number and/or name of the vessel; a description of the gear involved and where pertinent, a list of components such as size, type, grade, etc.;

b. the amount claimed together with proof of ownership of the gear which was damaged or lost on the obstruction. Proof of ownership must include paid receipts together with proof of payment such as copies of money orders or bank cashier's checks for the gear. No receipts paid by "cash" will be accepted for gear purchased after the effective date of this rule.

\* \* \*

d. an estimate from a commercial fishing gear repair or supply company, of the present replacement cost of the fishing gear and the repair cost of the fishing gear (if it is repairable). If fishing gear of the type damaged is usually made or repaired by the claimant, an estimate from a commercial fishing gear repair or supply company for the materials required to make the gear together with a notarized statement from the claimant that he or she makes his or her own gear may be used;

\* \* \*

7. a claim shall be deemed invalid if the claimant cannot, for any reason, produce the documentation required by this section.

#### B. - D. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.3.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of the Secretary, LR 6:515 (August 1980), amended LR 21: (September 1995).

Jack McClanahan  
Secretary

509#037

## RULE

### Department of Revenue and Taxation Sales Tax Division

#### Sales Tax—Tangible Personal Property (LAC 61:I.4301)

Under the authority of R.S. 47:301(16) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, has amended LAC 61:I:4301 pertaining to the definition of tangible personal property.

The Supreme Court of Louisiana ruled in the case of *South Central Bell Telephone Co. v. Sidney J. Barthelemy, et al.* (94-C-0499) on October 17, 1994, that both customized and canned software are tangible personal property and subject to the sales tax. The court's ruling nullified our regulation, which considers customized software as a nontaxable service and not subject to sales tax. This amendment removes all language pertaining to computer software and also incorporates additional exceptions to the definition of tangible personal property for certain coins, bullion, geophysical survey information, and repairs of motor vehicles that have been statutorily added to R.S. 47:301(16).

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue and Taxation

#### Chapter 43. Sales and Use Tax

#### §4301. Definitions

\* \* \*

#### 16. *Tangible Personal Property*—

a. General. With the exception of certain provisions of R.S. 47:301(14) relating to the furnishing of services, the question of whether an item constitutes tangible personal property is of utmost importance in determining whether its sale, use, storage, consumption, rental, or lease is subject to tax under the provisions of this Chapter. Under pertinent provisions of the Louisiana Civil Code, tangible personal property must be construed to be tangible movable property. Thus, if property is movable and meets the definition of tangible personal property contained in this Section, it is tangible personal property. R.S. 47:301(16) defines tangible personal property to be any property which may be seen, weighed, felt, or touched, or is in any manner perceptible to the senses.

b. Exceptions. R.S. 47:301(16) provides for specific exceptions from the definition of *tangible personal property*. The term *tangible personal property* shall not include:

- i. stocks, bonds, notes, or other obligations or securities;
- ii. gold, silver, or numismatic coins, or platinum, gold, or silver bullion having a total value of \$1,000 or more;
- iii. proprietary geophysical survey information or geophysical data analysis furnished under a restrictive use agreement even if transferred in the form of tangible personal property; or

iv. repairs of a motor vehicle by a licensed motor vehicle dealer that is performed subsequent to the lapse of an applicable warranty on that vehicle and at no charge to the owner of the vehicle. The services performed on this repair, along with the parts used will not have any value for sales and use tax. The dealer performing this repair must be licensed as a dealer in motor vehicles through the New Motor Vehicle Commission or the Used Motor Vehicle Commission. The repair must be associated with a warranty extended by the manufacturer.

c. Movable Versus Immovable. The nature of the property may change from movable to immovable or from immovable to movable so that its character at the moment of a transaction or activity must be established, in order to determine the taxability of that transaction or activity. As an example, a movable piece of machinery may be attached to a building in such a manner that it cannot be removed without doing damage to the machinery or to the building. In this case, the character of the property will have changed from movable to immovable. If, however, the machinery is attached in such a way that it may be removed from the building without doing damage to either it or the building, its character upon being separated reverts to movable property.

d. Repairs of Immovable Property. The distinction between movable and immovable property is of particular importance in determining whether repairs to property are taxable. If equipment or machinery removed from real property has been damaged, the item constitutes tangible personal property and repairs made thereto are taxable.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301(16).

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, LR 13:107 (February 1987) amended by the Sales Tax Division, LR 21: (September 1995).

Ralph Slaughter  
Secretary

9509#039

## RULE

### Department of Social Services Office of Family Support

#### Food Stamp Deduction (LAC 67:III.1981)

The Department of Social Services, Office of Family Support, has amended the LAC 67:III, Subpart 3, Food Stamps.

Pursuant to proposal of a provision to the 1993 Mickey Leland Childhood Hunger Relief Act, the department has established a deduction of child support from countable income in food stamp budgets.

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

### Chapter 19. Certification of Eligible Households Subchapter I. Income and Deductions §1981. Child Support Deduction

Legally obligated child support payments to, or for, an individual living outside of the household must be included in the deductions from the total monthly income when a budget for food stamp eligibility is determined. Households that fail or refuse to obtain necessary verification of their legal obligation or of their child support payments will have their eligibility and benefit level determined without consideration of a child support deduction.

AUTHORITY NOTE: Promulgated in accordance with F.R. 59:63265 et seq., 7 CFR 271, 273, 275.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21: (September 1995).

Gloria Bryant-Banks  
Secretary

9509#066

## RULE

### Department of Social Services Office of Family Support

#### Voter Registration Services (LAC 67:III.201)

The Department of Social Services, Office of Family Support, has amended the LAC 67:III, Subpart 1, General Administrative Procedures.

Pursuant to the National Voter Registration Act of 1993 and Act 10 of the 1994 Third Extraordinary Session of the Louisiana Legislature, the department is clarifying the language wherein applicants of the Food Stamp and AFDC Programs are provided the opportunity to register to vote.

## Title 67 SOCIAL SERVICES

### Part III. Office of Family Support Subpart 1. General Administrative Procedures Chapter 2. Voter Registration Services §201. Voter Registration by Mail

\* \* \*

B. In accordance with the guidelines of federal and state voter registration acts, parish offices shall provide to applicants and participants of these programs the opportunity to register to vote by providing the mail voter registration application form, and making available assistance to complete the application process unless an applicant refuses such assistance.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:116 and P.L. 103-31.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 21:273 (March 1995), amended LR 21: (September 1995).

Gloria Bryant-Banks  
Secretary

9509#065

**RULE**

**Board of Examiners of the Associated Branch Pilots for the Port of New Orleans**

**Qualifications of Pilots (Rule 506)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 34:945(A), the Board of Examiners of Bar Pilots for the Port of New Orleans hereby amends and reenacts Rule Number 506 (8) as follows.

**NAVIGATION AND SHIPPING**

**Part A. General Provisions**

**Rule 501-Rule 505**

\* \* \*

**§506. Qualifications of Pilots**

No person shall be recommended to the governor for appointment as a bar pilot unless the applicant (1) is a qualified elector of the state of Louisiana; (2) has served at least 12 months next preceding the date of his application in a pilot boat at the mouth of the Mississippi River or other entrances into the Gulf of Mexico or other outside waters from the Port of New Orleans; (3) has successfully passed the examination given by the board of examiners, as required by R.S. 34:948; (4) owns or has made a binding legal agreement to acquire as owner or part owner of at least one decked pilot boat of not less than 50 tons burden, which is used and employed exclusively as a pilot boat, as required by R.S. 34:950; (5) is a high school graduate, or in lieu thereof holds a third mate's license; (6) has served at least one year at sea on a sea-going vessel of not less than 1,600 gross tons in the deck department; (7) has successfully passed a physical examination which in the judgement of the board of examiners includes those standards, such as vision, color perception and hearing tests, to perform duties as a bar pilot; (8) is of good moral character; and (9) shall have completed satisfactorily an apprenticeship program which culminates in a cubing period of not less than nine months duration handling vessels over the routes of the bar pilots under the supervision of not less than 25 licensed state bar pilots.

Rule 507-508

\* \* \*

Chalin O. Perez  
Attorney

9509#045

**RULE**

**Department of Treasury  
Housing Finance Agency**

**Home Affordable Rental Housing Applications  
(LAC 16:II.Chapter 1)**

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

**Title 16**

**COMMUNITY AFFAIRS**

**Part II. Housing Finance Agency**

**Chapter 1. HOME Investment Partnership Program**

**§101. Home Program Application Fees**

The following fees govern the application and reprocessing of applications for HOME Funds.

1. Application Fee
 

1 to 4 units	\$ 200
5 to 32 units	1,000
33 to 60 units	1,500
61 to 100 units	2,500
Over 100 units	5,000
2. Analysis Fee
 

1 to 4 units	\$ 200
5 to 32 units	1,000
33 to 60 units	1,500
61 to 100 units	2,500
Over 100 units	5,000
3. Reprocessing Fee
 

A reprocessing fee of 50 percent of the Application Fee shall be due whenever significant revisions or changes of the contents of an application require a new feasibility and/or viability analysis.
4. Cost Certification Audit Fee\* \$2,500

\*Only if applicant does not contract with independent CPA to perform cost certification audit.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 19:908 (July 1993), repromulgated LR 19:1034 (August 1993), amended LR 21: (September 1995).

**§105. Selection Criteria to Award HOME Funds for Affordable Rental Housing**

Applications for HOME Funds will be rated in accordance with the selection criteria (Appendix IX) for which the applicant must initially indicate that the project qualifies.

	APPENDIX IX	POINTS
(A) Leverage Ratio for each HOME Dollar		
Minimum Other Dollars		
\$1	5	_____
\$2	10	_____
\$3	15	_____

- \$4 \_\_\_\_\_ 20\_\_\_\_\_
- \$5 \_\_\_\_\_ 25\_\_\_\_\_
- (B) Project to Construct or Rehabilitate Substandard Housing Units to Minimum Quality Standards with Total Funds Per Unit Not Exceeding:
  - \$ 2,500 \_\_\_\_\_ 25\_\_\_\_\_
  - \$ 5,000 \_\_\_\_\_ 20\_\_\_\_\_
  - \$ 7,500 \_\_\_\_\_ 15\_\_\_\_\_
  - \$10,000 \_\_\_\_\_ 10\_\_\_\_\_
  - \$15,000 \_\_\_\_\_ 7\_\_\_\_\_
  - \$20,000 \_\_\_\_\_ 5\_\_\_\_\_
  - \$25,000 \_\_\_\_\_ 2\_\_\_\_\_

- (C) Project to Rehabilitate Housing Units of Historic or Architectural Significance \_\_\_\_\_ 25\_\_\_\_\_
- (D) Project to Rehabilitate or create Housing Units Serving Special Needs Groups (Check one or more): \_\_\_\_\_ 50\_\_\_\_\_

- Elderly/Handicapped \_\_\_\_\_
- Homeless \_\_\_\_\_
- Disabled \_\_\_\_\_
- Physically \_\_\_\_\_
- Mentally \_\_\_\_\_
- HIV/AIDS \_\_\_\_\_

- (i) One Hundred Percent of Units serve or 50 units serve special needs group \_\_\_\_\_ 50\_\_\_\_\_
- (ii) Fifty Percent or 25 units serve special needs group \_\_\_\_\_ 25\_\_\_\_\_
- (iii) Twenty-Five Percent or 15 units serve special needs group \_\_\_\_\_ 15\_\_\_\_\_
- (E) Project Promotes Cooperative Housing \_\_\_\_\_ 25\_\_\_\_\_
- (F) Project to Establish Lease-Purchase Turnkey Program \_\_\_\_\_ 25\_\_\_\_\_
- (G) Minority/Women Participation (Check only one)

Managing General Partner of Applicant or Applicant is at least 51 percent owned by one or more minority individuals \_\_\_\_\_ 25\_\_\_\_\_

Managing General Partner of Applicant or Applicant is at least 30 percent owned by one or more minority individuals \_\_\_\_\_ 15\_\_\_\_\_

Managing General partner of Applicant or Applicant is at least 10 percent owned by one or more minority individuals \_\_\_\_\_ 10\_\_\_\_\_

Managing General Partner of Applicant or Applicant is at least 51 percent owned by women \_\_\_\_\_ 25\_\_\_\_\_

Managing General Partner of Applicant or Applicant is at least 30 percent owned by one or more minority individuals \_\_\_\_\_ 15\_\_\_\_\_

Managing General Partner of Applicant or Applicant is at least 10 percent owned by one or more minority individuals \_\_\_\_\_ 10\_\_\_\_\_

TOTAL \_\_\_\_\_

AUTHORITY NOTE: Promulgated in accordance with the R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Housing Finance Agency, LR 19:908 (July 1993), amended LR 21: (September 1995).

V. Jean Butler  
President

9509#002

**RULE**

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

**Black Bass (LAC 76:VII.179)**

The Wildlife and Fisheries Commission hereby establishes a rule for possession of black bass in John K. Kelly-Grand Bayou Reservoir.

**Title 76  
WILDLIFE AND FISHERIES  
Part VII. Fish and Other Aquatic Life  
Chapter 1. Freshwater Sport and Commercial Fishing  
§179. Black Bass Regulations - John K. Kelly-Grand Bayou Reservoir**

It shall be unlawful to retain or possess black bass (*Micropterus spp.*) in John K. Kelly-Grand Bayou Reservoir located in Red River Parish. This rule will expire at midnight, May 31, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21: (September 1995).

Perry Gisclair  
Chairman

9509#043

**RULE**

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

**Black Bass—Atchafalaya Basin (LAC 76:VII.165)**

The Wildlife and Fisheries Commission hereby amends a rule for black bass size regulations in the Atchafalaya Basin and the Lake Verret Area.

**Title 76  
WILDLIFE AND FISHERIES  
Part VII. Fish and Other Aquatic Life  
Chapter 1. Freshwater Sport and Commercial Fishing  
§165. Black Bass Regulations - Atchafalaya Basin-Lake Verret Area**

It shall be unlawful to take or possess, while on the water

or while fishing in the water, black bass less than 14 inches in total length in the area south of U.S. 190 from the West Atchafalaya Basin Protection Levee to the intersection of LA 1 and U.S. 190 due north of Port Allen, east of the West Atchafalaya Basin Protection Levee from U.S. 190 to U.S. 90, north of U.S. 90 from the West Atchafalaya Basin Protection Levee to LA 20, north and west of LA 20 from U.S. 90 to LA 1 in Thibodaux, south and west of LA 1 from LA 20 to U.S. 190. This rule will expire at midnight, September 30, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:326.3 and 325(C).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 19:361 (March 1993), amended LR 21: (September 1995).

Perry Gisclair  
Chairman

9509#042

**RULE**

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

**Crawfishing on the Sherburne Wildlife Management Area  
(LAC 76:VII.177)**

The Wildlife and Fisheries Commission does hereby promulgate a rule governing both recreational and commercial crawfishing on agricultural lands within the Sherburne Wildlife Management Area.

**Title 76**

**WILDLIFE AND FISHERIES**

**Part VII. Fish and Other Aquatic Life**

**Chapter 1. Freshwater Sport and Commercial Fishing**

**§177. Crawfishing on Agricultural Lands Within  
Sherburne Wildlife Management Area**

A. The Department of Wildlife and Fisheries manages, as part of Sherburne Wildlife Management Area (WMA), two agriculture units owned in fee title by the U.S. Army Corps of Engineers. These two tracts are located on the eastern portion of the Wildlife Management Area, near Ramah. Extensive land development in the form of levee impoundments, water control structures, and reforestation is planned on both of these farms to manage favorable habitat for wildlife. Due to the high interest in crawfish harvesting on the above mentioned farms, the following measures will be put in place and enforced to:

1. minimize disturbance to wildlife;
2. protect present and future reforestation efforts;
3. prevent damage to impoundment features;
4. allow utilization of crawfish resources for both recreational and commercial interests in a manner to avoid user conflicts.

B. Persons wishing to harvest crawfish on these farms will be required to obtain a permit from the Department of Wildlife and Fisheries. Each commercial harvester is assessed

a \$50 administrative fee and is allowed one helper. Permittee must be present to run traps. All persons harvesting crawfish recreationally from the ages of 16-59 must possess either a fishing license, hunting license, or a Wild Louisiana Stamp. Recreational harvesters are limited to 100 pounds per boat, per day. All crawfish harvesting will be allowed only between the hours of ½ hour before sunrise to ½ hour after sunset. Violation of any restrictions which apply to this permit will result in the permit being canceled in addition to any citations issued for the offense. The production and harvest of crawfish is incidental to water levels maintained to manage for wildlife species. Water levels will not be maintained solely for crawfish harvesting, nor is there any assurance that the water levels controlled for wildlife will yield crawfish. Guidelines are as follows:

1. North Farm. Acreage on this farm totals 800 acres. The entire farm will be impounded for waterfowl management. The eastern 1/3 of the property (289.7 acres) will continue to be farmed. If water conditions preclude farming operations, crawfishing activities will be restricted to watercraft without a motor. The remaining uncropped acreage (410.7 acres) will be open to crawfishing April 1 to July 31. No watercraft with a motor will be allowed. Entry into ponds for crawfishing will be at designated points only (contact the Opelousas office for the appropriate maps).

2. South Farm

a. Acreage on this farm totals 1,600 acres. This farm is divided into four units as follows.

i. Unit 1 - Closed to Crawfishing. Reforestation areas will be off limits to all crawfish harvesting activities to protect tree seedlings.

ii. Unit 2 - Crawfishing Permitted. Watercraft with motor will be allowed in this unit.

iii. Unit 3 - Crawfishing Permitted. No watercraft with a motor will be allowed in this unit for the protection of waterfowl impoundment features.

iv. Unit 4 - Crawfishing Permitted. Watercraft with a motor will be allowed in this unit.

b. Entry into all units of south farm is at designated points only, crawfish harvesting permitted from April 1 to July 31 (contact the Opelousas office for the appropriate maps).

**SPECIAL USE PERMIT**

**SHERBURNE WILDLIFE MANAGEMENT AREA**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_ Driver's License No. \_\_\_\_\_ DOB \_\_\_\_\_

PERIOD OF USE: From: \_\_\_\_\_, 19\_\_ To: \_\_\_\_\_, 19\_\_

C. Description. Contact the Opelousas office for appropriate maps.

D. Special Conditions

1. Crawfish harvesting allowed from April 1 to July 31 only.

2. Motorized watercraft allowed in designated areas only.

3. Entry into farm at designated points only.

4. Crawfish harvesting only between ½ hour before sunrise to ½ hour after sunset.

5. Recreational harvesting limited to 100 pounds live crawfish per boat per day. All recreational harvesters from

the ages of 16-59 must possess either a fishing license, hunting license, or Wild Louisiana Stamp.

6. Commercial harvesters are assessed a \$50 administrative fee and each permittee is allowed one helper. Permittee must be present to run traps.

7. By signing this permit, permittee agrees to abide by all special regulations. Any violation of WMA rules and regulations will result in cancellation of permit.

8. The production and harvest of crawfish is incidental to water levels maintained to manage for a diversity of wildlife species. Water levels will not be maintained solely for crawfish production and/or harvesting, nor is there any assurance that the water levels controlled for wildlife will yield crawfish.

9. \_\_\_\_\_ Recreational  
\_\_\_\_\_ Commercial Paid \_\_\_\_\_  
Permit Number \_\_\_\_\_ Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:109 and R.S. 56:761.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 21: (September 1995).

Perry Gisclair  
Chairman

9509#044

# NOTICES OF INTENT

## NOTICE OF INTENT

Department of Agriculture and Forestry  
Office of Forestry

Rural Fire Protection (LAC 7:XXXIX.21101)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Forestry, proposes to adopt regulations setting forth procedures for the assignment of state surplus property pursuant to the State Surplus Property Program. These rules comply with and are enabled by R.S. 3:2.

## Title 7 AGRICULTURE AND ANIMALS

### Part XXXIX. Forestry

#### Chapter 211. Rural Fire Protection

##### §21101. State Excess Property Program

The Department of Agriculture and Forestry, through the Office of Forestry, shall use the following procedures for the assignment of state surplus property to local governments or duly organized and officially recognized fire organizations to be utilized in suppressing or providing protection from fires in rural areas:

1. This program shall be called the State Surplus Property Program (hereinafter "the program").

2. The state forester, or his designee, shall be the "program coordinator" and responsible for coordinating with local governments or duly organized and officially recognized fire organizations for the assignment of state surplus property under the program.

3. In order to be eligible to participate in the program, local governments or duly organized and officially recognized fire organizations must submit an application in writing to the program coordinator, Alexander State Forest, Box 298, Woodworth, LA 71485. The application must contain the name, address and phone number of the applicant and must state in detail the specific equipment sought by the applicant. All applications will be date stamped as of the date received in the office of the program coordinator and will be checked to verify the applicant's eligibility to participate in the program.

4. The department shall maintain a list of applicants which shall be divided into three categories of requested property:

- a. vans and pickups up to 3/4 ton;
- b. pickups 1 ton or larger and larger trucks; and
- c. all other types of equipment not included in categories a and b.

5. Following receipt and verification of eligibility, the applicant's name and the date the application was received shall be placed on the list in the appropriate category or categories.

6. As equipment becomes available, the program coordinator will assign the property to the applicants in the following manner:

a. First priority shall be given to newly formed departments.  
b. Second priority shall be given to established departments that have not previously received property under the program.

c. Third priority shall be given to established departments that have previously received property under the program.

d. Should two or more applicants have equal priority under the order set forth above, the property shall be assigned based on the date the applications of those equal applicants was received by the program coordinator.

e. Should two or more applicants have equal priority under the order set forth above, the property shall be assigned to the applicant who can demonstrate to the program

coordinator the greatest need for the property.

7. Applicants shall be removed from the list upon assignment of property, or two years from the date their application was received by the program coordinator. Applicants shall be entitled to a two year extension of their original application, provided that the program coordinator receives a written request from the applicant 60 days prior to the expiration of the original application. Applications extended pursuant to this section shall maintain the same priority as the original application.

8. The assignment and the cooperative endeavor between the office of forestry and local governments or duly organized and officially recognized fire organizations shall be evidenced by a written agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Forestry, LR 21:

Interested persons should submit written comments on the proposed rules to Louis Heaton through close of business on October 27, 1995 at 5835 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these rules is available.

Bob Odom  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Rural Fire Protection**

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

There will be no additional implementation costs or savings to state or local governments required by the implementation of this action.

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

Since this is an equipment loan program and not a donation, there will be no effect on revenue collections.

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

There will be no costs to groups using this program. There will be a benefit to the groups which obtain surplus equipment under the program in that the groups will have access to equipment at no cost.

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

Since the groups eligible to participate in this program are all public service entities, there will be no effect on competition or employment.

Richard Allen  
Assistant Commissioner  
9509#110

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Economic Development  
Real Estate Commission**

Licensee's Compensation  
(LAC 46:LXVII.3103)

Notice is hereby given that the Louisiana Real Estate Commission will consider the adoption of revisions to the existing rules and regulations of the agency, the text of which appears in its entirety in the emergency rule section of this September, 1995 issue of the *Louisiana Register*, specifically LAC 46:LXVII, Subpart 1, Chapter 31, Compensation.

Interested parties may direct inquiries and present their views in writing to the commission through October 20, 1995. Contact Stephanie C. Fagan, Communications Specialist, Louisiana Real Estate Commission, Box 14785, Baton Rouge, LA 70898-4785.

J. C. Willie  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Licensee's Compensation**

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

There are no estimated implementation costs (savings).

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

There is no estimated effect on revenue collections.

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

The proposed language protects real estate brokers in that it prohibits licensees from accepting compensation from any person other than their qualifying or sponsoring broker when providing services related to a real estate license. Effectively, this protects the general public in that it limits the source of expenses, thereby reducing the possibility of duplicate, fraudulent, or erroneous costs.

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

There is no estimated effect on competition and employment.

J. C. Willie  
Executive Director  
9509#041

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Bulletin 1794—Textbooks and Library Books

In accordance with R. S. 49:950 et seq., the Administrative

Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, the following amendment to page 16 of Bulletin 1794, Textbook and Library Book Policy and Procedure Manual, Revised 1994.

Page 16, amend Number 3 to read:

1. Submit request to the department by December 15 of each year.

2. Upon submission of request, parish shall notify all nonpublic schools within their parish of the availability of these textbooks by disciplines, giving them three weeks to express their interest in securing any of these textbooks.

\* \* \*

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

HISTORICAL NOTE: LR 21:

Interested persons may submit comments on the proposed policy until 4:30 p.m., November 9, 1995 to: Eileen Bickham, State 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: Bulletin 1794**

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

The estimated implementation cost to print 100 copies of the amended page 16 of the revised 1994 Policy and Procedures Manual, Bulletin 1794 is \$40. The Board of Elementary and Secondary Education estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$70. Funds are available.

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

The estimated effect on revenue collections is \$0.

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

There will be no estimated cost associated with this change. The economic benefits will be to nonpublic schools that are able to use some of the books that will be made available through this change.

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

There is no estimated effect on competition and employment by incorporating the amended page 16 of the revised 1994 Policy and Procedures Manual, Bulletin 1794.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9509#078

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

**Minimum Foundation Program (MFP)  
Student Membership Data (LAC 28:I.1709)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to the present policy on student count for Minimum Foundation Program funding. This policy which was suspended for one year (June 24, 1994 - June 24, 1995) is being amended. This is an amendment to the Administrative Code, Title 28 as stated below:

**Title 28**

**EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 17. Finance and Property**

**§1709. Budgets**

\* \* \*

**H. MFP General Provisions**

\* \* \*

3. Student Count for MFP Funding. Reporting documents submitted by the local city and parish school systems shall be in accordance with the rules and regulations of the State Department of Education and the R.S. that pertain to the Minimum Foundation Program. This information is to be audited by the Bureau of Educational Finance Services for compliance. The auditor(s) shall provide both positive and negative assurance that the student count and other information provided by the local city and parish school systems is free of material misstatements.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6.

HISTORICAL NOTE: Promulgated by the Department of Education LR 21:

Interested persons may submit comments on the proposed policy until 4:30 p.m., November 9, 1995 to: Eileen Bickham, State 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: Audit Policy of MFP Student Membership Data**

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

Estimated savings for some school districts could approach \$3,500; however, other districts may not realize any cost savings.



BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$70. Funds are available.

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

There should be no effect on revenue collections of state or local governmental units.

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

The estimated costs and/or economic benefits to directly affected persons or nongovernmental groups are immaterial.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition or employment is indeterminable.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9509#079

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Fee System (LAC 33:III.223)(AQ124)**

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 gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.223 (AQ124).

The rule proposes changes to the LAC 33:III.223 fee schedule. The rule provides a fee increase of 5 percent for criteria Pollutant, Air Toxic, Accident Prevention, Asbestos Removal, Asbestos Certification, and Stage II Vapor Recovery fees in order to compensate for the cost of operating the Air Quality Program. There would be a 2.8 percent increase in all combined Air Quality fees generated.

This existing fee increase is necessary because of new rules and increased surveillance activities associated with the Clean Air Act Amendments (CAAA) of 1990 and rising operational costs estimated at \$1,600,000.

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

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

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

**Chapter 2. Fee System of the Air Quality Control Programs**

**§223. Fee Schedule Listing**

\* \* \*

[See Prior Text in Fee Number 0010-2010]

ADDITIONAL PERMIT FEES AND ADVF FEES		
Fee Number	Fee Description	Amount
2020	The Issuance of an Asbestos Demolition Verification Form (ADVF) - (at least 10 working days notification given)	52.50
2030	The Issuance of an Asbestos Demolition Verification Form (ADVF) - (less than 10 working days notification given)	78.75
2040	Agent Accreditation: Includes Contractor/Supervisor, Inspector, Management Planner, or Project Designer-Normal Processing (greater than 3 working days after receipt of required documentation and fees)	210.00
2050	Agent Accreditation: Includes Contractor/Supervisor, Inspector, Management Planner, or Project Designer-Emergency Processing (less than or equal to 3 working days after receipt of required documentation and fees)	315.00
2060	Worker Accreditation-Normal Processing (greater than 3 working days after receipt of required documentation and fees)	52.50
2070	Worker Accreditation-Emergency Processing (less than or equal to 3 working days after receipt of required documentation and fees)	78.75
2080	Duplicate Certificate	26.25
2090	Training Organization Recognition Plus Trainer Recognition Per Trainer-Normal Processing (greater than 3 working days after receipt of required documentation and fees)	315.00 52.50
2100	Training Organization Recognition Plus Trainer Recognition Per Trainer-Emergency Processing (less than or equal to 3 working days after receipt of required documentation and fees)	472.50 78.75

ADDITIONAL PERMIT FEES AND ADVF FEES		
Fee Number	Fee Description	Amount
2200 *NOTE 13*	Air Toxics Annual Fee Per Ton Emitted on an Annual Basis	
	Class I Pollutants	105.00
	Class II Pollutants	52.50
	Class III Pollutants	26.25
2300 *NOTE 14*	Criteria Pollutant Annual Fee Per Ton Emitted on an Annual Basis:	9.45 /ton
	Nitrogen oxides (NO <sub>x</sub> )	
	Sulfur dioxide (SO <sub>2</sub> )	
	Nontoxic organic (VOC)	
	Particulate (PM <sub>10</sub> )	
2400	An application approval fee for Stage II Vapor Recovery	105.00
	An annual facility inspection fee for Stage II Vapor Recovery	157.50
2600 *NOTE 16*	Accident Prevention Program Annual Registration Fee for A-1 Sources	210.00
2620 *NOTE 16*	Accident Prevention Program Annual Registration Fee for A-2 Sources	157.50
2700 *NOTE 17*	Fleet Size:	
	10-25 vehicles	315.00
	26-50 vehicles	525.00
	51-100 vehicles	787.50
	101+ vehicles	1,050.00
2800	An application fee for mobile sources emissions banking (auto scrappage)	52.50
2810	An application fee for point source emissions banking. Not applicable when filing application with a new permit or permit modification.	52.50

\* \* \*

[See Prior Text in Explanatory Notes 1-17]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December, 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1419 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 21:22 (January 1995), LR 21:

A public hearing will be held on October 27, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ124. Such comments should be submitted no later than November 3, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810 or to FAX number (504)765-0486.

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Fee System**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no costs (savings) accruing to the state government as fee collection resources are currently in place.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed fee increase would augment revenues by approximately \$311,000.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The fee increase would be paid mostly by the nongovernment regulated community. Examples of the largest estimated increase would be:

Company	Existing Annual Maintenance Fee	Proposed Increase	Annual Maintenance Fee after Increase
Dow Chemical Company/ Plaquemine			
Criteria	\$64,107	\$3,205	\$67,312
Air Toxic	\$22,575	\$1,129	\$23,704
Accident	\$400	\$20	\$420
LA Power & Light			
Criteria	\$141,692	\$7,085	\$148,777
Air Toxic	-0-	-0-	-0-
Accident	-0-	-0-	-0-
Arcadian Fertilizer			
Criteria	\$57,362	\$2,868	\$60,230
Air Toxic	\$23,925	\$1,196	\$25,121
Accident	\$200	\$10	\$210

7. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There isn't any anticipated effect on competition and employment. An increase in funds for state air pollution programs is expected for all states as a result of the Clean Air Act Amendment of 1990 (Public Law 101-549).

us Von Bodungen  
ssistant Secretary  
09#058

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Standards of Performance for Petroleum Refineries  
(LAC 33:III.3260 and 3264)(AQ132)**

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, seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.3260 and 3264, (AQ132). It is proposed that LAC 33:III.3260 and 3264 be updated to conform to the federal regulation (40 CFR 60.100 and 60.104).

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

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

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

**Chapter 31. Standards of Performance for New Stationary Sources**  
**Subchapter J. Standards of Performance for Petroleum Refineries (Subpart J)**  
**§3260. Applicability and Designation of Affected Facility**

\* \* \*

[See Prior Text in A]

B. Any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device under Subsection A of this Section that commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant under Subsection A of this Section that commences construction or modification after October 4, 1976, is subject to the requirements of this Subchapter, except as provided under Subsections C and D of this Section.

C. Any fluid catalytic cracking unit catalyst regenerator under Subsection B of this Section that commences construction or modification on or before January 17, 1984, is exempted from LAC 33:III.3264.C.

D. Any fluid catalytic cracking unit in which a contact material reacts with petroleum derivatives to improve feedstock quality and in which the contact material is regenerated by burning off coke and/or other deposits and that commences construction or modification on or before January 17, 1984, is exempt from 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 Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

**§3264. Standard for Sulfur Oxides**

\* \* \*

[See Prior Text in A-B.2]

a. for an oxidation control system or a reduction control system followed by incineration or an oxidation control system, 250 ppm by volume (dry basis) of sulfur dioxide (SO<sub>2</sub>) at 0 percent excess air; or

\* \* \*

[See Prior Text in B.2.b-E]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:372 (April 1995), LR 21:

A public hearing will be held on October 27, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ132. Such comments should be submitted no later than November 3, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810 or to FAX number (504)765-0486.

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Standards of Performance for Petroleum  
Refineries**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will not be any implementation cost (saving) to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will not be any effect on revenue collections of state and local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will not be any costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will not be any effect on competition and employment.

Gus Von Bodungen  
Assistant Secretary  
9509#059

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Quality Assurance Procedures  
(LAC 33:III.6115 and 6117)(AQ128)**

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 gives notice that rulemaking procedures have been initiated to amend the Air Quality Division

regulations, LAC 33:III.6115 and 6117, (AQ128).

It is proposed that quality assurance procedures for continuous emission monitors be incorporated into Louisiana's Air Quality regulations. These are LAC 33:III.6115 and 6117.

This action is proposed in order to make the Louisiana Air Quality regulations the same as the federal regulations.

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

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

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

**Chapter 61. Division's Source Test Manual  
§6115. Performance Specification 4A—Specifications  
and Test Procedures for Carbon Monoxide  
Continuous Emission Monitoring in Stationary  
Sources**

**A. Applicability and Principle**

**1. Applicability**

a. This specification is to be used for evaluating the acceptability of carbon monoxide (CO) continuous emission monitoring systems (CEMSs) at the time of or soon after installation and whenever specified in an applicable section of the regulations.

b. This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS. To evaluate CEMS performance the administrative authority may require, under section 114 of the Clean Air Act Amendments of 1990, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test. See LAC 33:III.3125.C.

c. The definitions, installation specifications, test procedures, data reduction procedures for determining calibration drifts (CD) and relative accuracy (RA), and reporting of LAC 33:III.6105.B, C, E, F, H, and I apply to this specification.

2. Principle. Reference method (RM), CD, and RA tests are conducted to determine that the CEMS conforms to the specification.

**B. Performance and Equipment Specifications**

1. Data Recorder Scale. This specification is the same as LAC 33:III.6105.D.1. The CEMS shall be capable of measuring emission levels under normal conditions and under periods of short-duration peaks of high concentrations. This dual-range capability may be met using two separate analyzers, one for each range, or by using dual-range units that have the capability of measuring both levels with a single unit. In the latter case when the reading goes above the full-scale measurement value of the lower range, the higher-range operation shall be started automatically. The CEMS recorder

range must include zero and a high-level value. For the low-range scale, the high-level value shall be between 1.5 times the pollutant concentration corresponding to the emission standard level and the span value. For the high-range scale, the high-level value shall be set at 2,000 ppm, as a minimum, and the range shall include the level of the span value. There shall be no concentration gap between the low- and high-range scales.

2. Interference Check. The CEMS must be shown to be free from the effects of any interferences.

3. Response Time. The CEMS response time shall not exceed 1.5 min to achieve 95 percent of the final stable value.

4. Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas, gas cell, or optical filter by more than 5 percent of the established span value for six out of seven test days.

5. Relative Accuracy. The RA of the CEMS shall be no greater than 10 percent of the mean value of the RM test data in terms of the units of the emission standard or 5 ppm, whichever is greater. Under conditions where the average CO emissions are less than 10 percent of the standard, a cylinder gas audit may be performed in place of the RA test to determine compliance with these limits. In this case the cylinder gas shall contain CO in 12 percent carbon dioxide as an interference check. If this option is exercised, LAC 33:III.6050 must be used to verify that emission levels are less than 10 percent of the standard.

C. Response Time Test Procedure. The response time test applies to all types of CEMS's, but will generally have significance only for extractive systems. The entire system is checked with this procedure including applicable sample extraction and transport, sample conditioning, gas analyses, and data recording. Introduce zero gas into the system. For extractive systems, the calibration gases should be introduced to the probe as near to the sample location as possible. For in-situ systems, introduce the zero gas at the sample interface so that all components active in the analysis are tested. When the system output has stabilized (no change greater than 1 percent of full scale for 30 sec), switch to monitor stack effluent and wait for a stable value. Record the time (upscale response time) required to reach 95 percent of the final stable value. Next, introduce a high-level calibration gas and repeat the procedure (stabilize, switch to sample, stabilize, record). Repeat the entire procedure three times and determine the mean upscale and downscale response times. The slower or larger of the two means is the system response time.

#### D. Relative Accuracy Test Procedure

1. Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, Number of RM Tests, and Calculations. These are the same as that in LAC 33:III.6105.G.1-3 and 5, respectively.

2. Reference Methods. Unless otherwise specified in an applicable section of the regulation, LAC 33:III.6050 is the Method for this performance specification. When evaluating nondispersive infrared continuous emission analyzers, LAC 33:III.6050 shall use the alternative interference trap specified in LAC 33:III.6050.A. LAC 33:III.6051 or 6052 is an acceptable alternative to LAC 33:III.6050.

#### E. Bibliography

1. Same as in LAC 33:III.6109.D.

2. "Gaseous Continuous Emission Monitoring Systems - Performance Specification Guidelines for SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, O<sub>2</sub>, and TRS." EPA-450/3-82-026. U.S. Environmental Protection Agency, Technical Support Division (MD-19), Research Triangle Park, N.C. 27711.

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 21:

### §6117. Performance Specification 7—Specifications and Test Procedures for Hydrogen Sulfide Continuous Emission Monitoring Systems in Stationary Sources

#### A. Applicability and Principle

##### 1. Applicability

a. This specification is to be used for evaluating the acceptability of hydrogen sulfide (H<sub>2</sub>S) continuous emission monitoring systems (CEMSs) at the time of or soon after installation and whenever specified in an applicable section of the regulations.

b. This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS. To evaluate CEMS performance the administrative authority may require, under section 114 of the Clean Air Act Amendments of 1990, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test. See LAC 33:III.3125.C.

c. The definitions, installation specifications, test procedures, data reduction procedures for determining calibration drifts (CD) and relative accuracy (RA), and reporting of LAC 33:III.6105.B, C, E, F, H, and I apply to this specification.

2. Principle. Reference method (RM), CD, and RA tests are conducted to determine that the CEMS conforms to the specification.

#### B. Performance and Equipment Specifications

1. Instrument Zero and Span. This specification is the same as LAC 33:III.6105.D.1.

2. Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas or reference source by more than 5 percent of the established span value for six out of seven test days (e.g., the established span value is 300 ppm for LAC 33:III.Chapter 31.Subchapter J fuel gas combustion devices).

3. Relative Accuracy. The RA of the CEMS shall be no greater than 20 percent of the mean value of the RM test data in terms of the units of the emission standard or 10 percent of the applicable standard, whichever is greater.

#### C. Relative Accuracy Test Procedure

1. Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, Number of RM Tests, and Calculations.

These are the same as that in LAC 33:III.6105.G.1-3 and 5, respectively.

2. Reference Methods. Unless otherwise specified in an applicable section of the regulation, LAC 33:III.6053 is the RM for this performance specification.

#### D. Bibliography

1. U.S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; Appendix B; Performance Specifications 2 and 3 for SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, and O<sub>2</sub> Continuous Emission Monitoring Systems; Final Rule. 48 CFR 23608. Washington, D.C. U.S. Government Printing Office. May 25, 1983.

2. U.S. Government Printing Office. Gaseous Continuous Emission Monitoring Systems - Performance Specification Guidelines for SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, O<sub>2</sub>, and TRS. U.S. Environmental Protection Agency. Washington, D.C. EPA-450/3-82-026. October 1982. 26 p.

3. Maines, G.D., W.C. Kelly (Scott Environmental Technology, Inc.), and J.B. Homolya. Evaluation of Monitors for Measuring H<sub>2</sub>S in Refinery Gas. Prepared for the U.S. Environmental Protection Agency. Research Triangle Park, N.C. Contract Number 68-02-2707. 1978. 60 p.

4. Ferguson, B.B., R.E. Lester (Harmon Engineering and Testing), and W.J. Mitchell. Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery. Prepared for the U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication Number EPA-600/4-82-054. August 1982. 100 p.

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 21:

A public hearing will be held on October 27, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ128. Such comments should be submitted no later than November 3, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810 or to FAX number (504)765-0486.

James B. Thompson, III  
Assistant Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Quality Assurance Procedures

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will not be any implementation cost (saving) to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will not be any effect on revenue collections of state and local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will not be any costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will not be any effect on competition and employment.

Gus Von Bodungen  
Assistant Secretary  
9509#091

John R. Rombach  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary Office of Management and Finance Fiscal Services Division

#### Method of Fee Payment

(LAC 33:III.209, 211, 215; 33:V.5125, 5127, 5129, 5141;  
33:VII.529; 33:IX.1307, 1309; 33:XI.307;  
33:XV.2505, 2509, 2511)(OS20)

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 gives notice that rulemaking procedures have been initiated to amend LAC 33:III.209, 211.B.4, 215; V.5125.C, 5127, 5129, 5141.A.2; VII.529.D-F; IX.1307, 1309.G; XI.307.B.2, and C-D; XV.2505, 2509, 2511 (OS20).

The Office of Management and Finance proposes this rule to standardize methods for payment of annual monitoring and maintenance fees, specifically regarding date of payment, late payment, and failure to pay.

The regulation is needed to establish consistency among the individual divisions in the department regarding collection of annual monitoring and maintenance fees.

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

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

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

**Chapter 2. Fee System of the Air Quality Control Programs**

**§209. Annual Fees**

All parties conducting activities for which an annual fee is provided shall be subject to the payment of such fee by the due date indicated on the invoice.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

**§211. Methodology**

\* \* \*

[See Prior Text in A-B.3]

4. All invoices for annual maintenance fees for major sources shall be submitted to those sources during the fiscal year. The annual maintenance fee shall be applicable to the fiscal year beginning July 1 of each year and ending the following June 30. Failure to remit the annual maintenance fee in accordance with the above shall be considered grounds for revoking an existing permit. Maintenance fees not received for prior fiscal years are due upon receipt of new or duplicate invoices. Minor sources may or may not receive an annual compliance inspection. In this case the maintenance fee must be paid within 30 days after notification by the agency of the amount due. Only one such fee shall be charged annually.

\* \* \*

[See Prior Text in B.5-16.b]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

**§215. Method of Payment**

All fee payments shall be made by check, draft, or money order payable to the Department of Environmental Quality, and mailed to the address provided on the invoice.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), repromulgated LR 14:612 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:706 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

**Part V. Hazardous Waste and Hazardous Materials**  
**Subpart 1. Department of Environmental Quality—**  
**Hazardous Waste**

**Chapter 51. Fee Schedules**  
**§5125. Annual Monitoring and Maintenance Fee**

\* \* \*

[See Prior Text in A-B]

C. All annual fees provided by this Chapter shall be paid by the due date indicated on the invoice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:321 (May 1986), LR 12:676 (October 1986), LR 13:433 (August 1987), LR 15:378 (May 1989), LR 17:658 (July 1991), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

**§5127. Payment**

All fee payments shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the invoice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

**§5129. Late Payment**

Fees not received within 15 days of the due date will be charged an additional 10 percent per month of the assessed fee. The late fee shall be calculated starting from the due date indicated on the invoice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:533 (May 1985), LR 12:676 (October 1986), LR 18:725 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

**§5141. Incinerator and Boiler/Industrial Furnace Inspection and Monitoring Fee**

\* \* \*

[See Prior Text in A-A.1]

2. This fee will be billed following completion of the trial burn or test burn and must be paid by the due date indicated on the invoice.

\* \* \*

[See Prior Text in B]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR:16:1057 (December 1990), amended LR 18:1375 (December 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

**Part VII. Solid Waste**

**Subpart 1. Solid Waste Regulations**

**Chapter 5. Solid Waste Management System**  
**Subchapter D. Solid Waste Fees**

## §529. Annual Monitoring and Maintenance Fee

\* \* \*

[See Prior Text in A-C]

D. Fee payment shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the invoice.

E. Fees not received within 15 days of the due date will be charged an additional 10 percent per month of the original assessed fee. The late fee shall be calculated starting from the due date indicated on the invoice.

F. Failure to pay the prescribed application fee or annual fee as provided herein will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, or variance.

\* \* \*

[See Prior Text in G]

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

### Part IX. Water Quality

#### Chapter 13. Water Pollution Control Fee System

##### §1307. Definitions

All terms used in these regulations, unless the context otherwise requires or unless specifically defined in the Louisiana Environmental Quality Act, or in substantive regulations promulgated by the secretary of the Department of Environmental Quality, shall have their usual meaning. In addition, for purposes of these regulations, the following definitions apply:

\* \* \*

[See Prior Text]

*Due Date*—the date indicated on the invoice.

\* \* \*

[See Prior Text]

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2014(B).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources LR 11:534 (May 1985), amended LR 18:731 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

##### §1309. Fee System

\* \* \*

[See Prior Text in A-F]

G. **Due Date.** Fees shall be received by the department by the due date indicated on the invoice.

\* \* \*

[See Prior Text in H-M]

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular §2014(B).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:534 (May 1985), amended LR 14:626 (September 1988), LR 18:731 (July 1992), LR 21:798 (August 1995), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

## Part XI. Underground Storage Tanks Chapter 3. Registration Requirements, Standards, and Fee Schedule

### §307. Fee Schedule

\* \* \*

[See Prior Text in A-B.1.b]

2. Fee payment shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the invoice.

\* \* \*

[See Prior Text in B.3-5]

C. **Late Payment.** Fees not received within 15 days of the due date will be charged an additional 10 percent per month of the original assessed fee. The late fee shall be calculated starting from the due date indicated on the invoice.

D. **Failure to Pay.** Failure to pay the prescribed application fee or annual fee as provided herein shall constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

### Part XV. Radiation Protection

#### Chapter 25. Fee Schedule

##### §2505. Annual Fees

All activities for which an annual fee is provided shall be subject to the payment of such fee by the due date indicated on the invoice, except that any fee in excess of \$50,000, upon written application to, and approval of, the administrative authority, may be paid in installments over a period not to exceed six months, according to a payment schedule established by the division or the administrative authority.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:718 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

##### §2509. Method of Payment

Fee payment shall be made by check, draft, or money order payable to the Department of Environmental Quality and mailed to the department at the address provided on the invoice.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:



## §2511. Failure to Pay

Failure to pay the prescribed application fee or annual fee as provided herein will constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:719 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 21:

A public hearing will be held on October 27, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS20. Such comments should be submitted no later than November 3, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884-282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810 or to FAX number (504)765-0486.

James B. Thompson, III  
Assistant Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Method of Fee Payment

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

No significant effect of this proposed rule on implementation costs to state or local governmental units is anticipated.

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

No significant effect of this proposed rule on state or local governmental revenue collections is anticipated.

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

No significant costs or economic benefits to directly affected persons or nongovernmental groups of this proposed rule is anticipated.

### 7. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No significant effect of this proposed rule on competition and employment is anticipated.

Larry Mitchell  
Undersecretary  
(504)765-0600

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Examiners of Psychologists

#### Disclosure of Financial Interests and Prohibited Payments (LAC 46:LXIII.Chapter 21)

Notice is hereby given, in accordance with R.S. 49:950 et seq. that the Board of Examiners of Psychologists, pursuant to the authority vested in the board by R. S.37:1744, R.S. 37:1745, and the provisions of the Administrative Procedure Act, intends to adopt rules implementing, interpreting and providing for enforcement of the provisions of Act 657 of 1993, requiring written disclosure of a psychologist's financial interest in another health care provider prior to referring a patient to such health care provider and of Act 827 of 1993, prohibiting certain payments in return for the referral or solicitation of patients by psychologists and other health care providers, LAC 46:LXIII.2103 through 2115 as follows:

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXIII. Psychologists

#### Chapter 21. Disclosure of Financial Interests and Prohibited Payments

#### §2101. Scope and Purpose of Chapter

The rules of this Chapter interpret, implement and provide for the enforcement of R.S. 37:1744 and R.S. 37:1745 requiring disclosure of a psychologist's financial interest in another health care provider to whom or to which the psychologist refers a patient, and prohibiting certain payments in return for referral or soliciting patients. It is the purpose of these rules to prevent payments by or to a psychologist as a financial incentive for the referral of patients to a psychologist or other health care provider for diagnostic or therapeutic services or items. These rules should be interpreted, construed and applied so as to give effect to such purposes and intent.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

#### §2103. Definitions

A. For the purpose of this Chapter, the following terms are defined as follows:

**Board**—the Louisiana State Board of Examiners of Psychologists.

**Financial Interest**—a significant ownership or investment interest established through debt, equity or other means and held, directly or indirectly, by a psychologist or a member of the psychologist's immediate family, or any form of direct or indirect remuneration of referral.

**Group Practice**—a group of two or more psychologists, operating in whole or in part as psychologists, legally organized as a general partnership, registered limited liability partnership, professional psychological corporation, limited liability company, foundation, nonprofit corporation or similar organization or association, including a faculty practice plan.

*Health Care Item*—any substance, product, device, equipment, supplies or other tangible good or article which may be used or is useful in the provision of health care.

*Health Care Provider*—any person licensed by a department, board, commission or other agency of the State of Louisiana to provide, or which does in fact provide, preventative, diagnostic, or therapeutic health care services or items.

*Immediate Family*—as respects a psychologist, the psychologist's spouse, children, grandchildren, parents, grandparents and siblings.

*Investment Interests*—a security issued by an entity, including, without limitation, shares in a corporation, interests in or units of a partnership, bonds, debentures, notes or other debt instruments.

*Payment*—the tender, transfer, exchange, distribution or provision of money, goods, services or anything of economic value.

*Person*—a natural person or a partnership, corporation, organization, association, facility, institution or any governmental subdivision, department, board, commission or other entity.

*Psychologist*—any individual licensed to practice psychology by the Louisiana State Board of Examiners of Psychologists.

*Psychologist Applicant/Candidate*—a graduate of an approved doctoral program in psychology who has applied to the board for licensure and who is practicing under the supervision of a licensed psychologist under applicable provisions of LAC Title 46, Part LXIII.

*Referral*—any direction, recommendation or suggestion given by the psychologist to a patient, directly or indirectly, which is likely to determine, control or influence the patient's choice of another health care provider for the provision of health care services or items.

*Remuneration for Referral*—any arrangement or scheme, involving any remuneration, directly or indirectly, in cash or in kind, between a psychologist, or an immediate family member of such psychologist, and another health care provider which is intended to induce referrals by the psychologist to the health care provider or by the health care provider to the psychologist, other than the amount paid by an employer to an employee who has a bona fide employment relationship with the employer, for employment in the furnishing of any health care item or service.

B. Construction. As used here and after in this Chapter, the term "psychologist" is deemed to likewise incorporate psychologist applicant/candidate as defined herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

#### **Subchapter A. Disclosure of Financial Interest in Third-Party Health Care Providers**

##### **§2105. Required Disclosure of Financial Interests**

A. Mandatory disclosure. The psychologist shall not make any referral of a patient outside of the psychologist's group practice for the provision of health care items or services by

any health care provider in which the referring psychologist has a significant financial interest unless, in advance of such referral, the referring psychologist discloses to the patient, in accordance with relative provision of this Chapter, the existence and nature of financial interests.

B. Definition: Significant Ownership or Investment Interest. For the purpose of these regulations, an ownership or investment interest shall be considered "significant" within the meaning of §2105.A, if such interest satisfies any of the following tests:

1. such interests, in dollar amount or value, represents five percent or more of the gross assets of the health care provider in which an interest is held;

2. such interest represents five percent or more of the voting securities of the health care provider in which such interest is held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

##### **§2107. Prohibited Arrangements**

Any arrangement or scheme including cross referral arrangements, which the psychologist knows, or should know has a principal purpose of ensuring or inducing referrals by the psychologist to another health care provider which, if made directly by the psychologist, would be a violation of §2105 shall be deemed a violation of §2105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

##### **§2109. Form of Disclosure**

A. Required Contents. The disclosure required by §2105 of this Chapter shall be made in writing, shall be furnished to the patient, or the patient's authorized representative, prior to or at the time of making the referral, and shall include:

1. the psychologist's name, address and phone number;

2. the name and address of the health care provider to whom the patient is being referred by the psychologist;

3. the nature of the items or services which the patient is to receive from the health care provider to which the patient is being referred; and

4. the existence and nature of the psychologist's financial interest in the health care provider to whom or to which the patient is being referred.

B. Permissible Contents. The form of disclosure required by §2105 of this Chapter may include a signed acknowledgement by the patient or the patient's authorized representative that the required disclosure has been given.

C. Approved Form. Notice to a patient given substantially in the form of Disclosure of Financial Interest, found at the end of this Chapter, shall be presumptively deemed to satisfy the disclosure requirements of this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

## Subchapter B. Illegal Payments

### 2111. Prohibition of Remuneration for Referrals

A. A psychologist shall not knowingly or willfully make or offer to make any payment, directly or indirectly, overtly or covertly, in cash or in kind, to induce another person to refer an individual to the psychologist for the furnishing or arranging of the furnishing of any health care item or service.

B. A psychologist shall not knowingly or willfully solicit, receive or accept any payment, directly or indirectly, overtly or covertly, in cash or in kind, or in return for referring a patient to a health care provider for the furnishing or arranging for the furnishing of any health care item or service.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

### 2313. Exceptions

A. A proportional return on investment. Payments or distributions by any entity representing a direct return on investment based upon a percentage of ownership shall not be deemed a payment prohibited by R.S. 37:1445(B) or by §2111 of these rules provided that:

1. the amount of payment to an investor in return for the investment interest is directly proportional to the amount or value of the capital investment, including the fair market value of any pre-operational services rendered of that investor;

2. the terms on which an investment interest was or is offered to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be no different than the terms offered to other investors;

3. the terms which an investment interest was or is offered to an investor who is in a position to make or influence referrals to, furnish items or services to or otherwise generate for the entity must not be related to the previous expected volume of referrals, items or services furnished or the amount of business otherwise generated by that investor to the entity;

4. there is no requirement that an investor make referrals to, be in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity as a condition of becoming or remaining an investor;

5. the entity or other investor does not market or furnish the entity's items or services to investors differently than to non-investors; and

6. the entity does not loan funds to or guarantee a loan to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

B. General Exceptions. Any payment, remuneration, practice or arrangement which is not prohibited by or unlawful under §1128B(b) of the Federal Social Security Act (act), 42 U.S.C. §1320a-7b(b), as amended, with respect to health care items or services for which payment may be made under Title XVIII or Title XIX of the act, including those payments and practices sanctioned by the secretary of the United States Department of Health and Human Services,

through regulations promulgated at 42 C.F. R. §1001.952, shall not be deemed a payment prohibited by R.S. 37:1745(B) or by §2111 of these rules with respect to health care items or services for which payment may be made by any patient or third-party payers, whether a governmental or private payer, on behalf of a patient.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

### §2115. Effect of Violation

A. Any violation of or failure of compliance with the prohibitions and provisions of §2105 and/or §2111 of this Chapter shall be deemed grounds for disciplinary proceedings against a psychologist, providing cause for the board to deny, revoke, suspend, restrict, refuse to issue or impose probationary or other restrictions on any license held or applied for by a psychologist found guilty of such violation.

B. Administrative Sanctions. In addition to the sanctions provided for by §2115.A, the board may order the additional sanctions or penalties described below:

1. Upon proof of a violation of §2105 of this Chapter by a psychologist, the board may order that all or any portion of any amounts paid by a patient, and/or any third-party payor on behalf of the patient, for health care items or services furnished upon a referral by the psychologist in violation of §2105 be refunded by the psychologist to such patient and/or third-party payor together with legal interest on such payment at the rate prescribe by law calculated from the date on which any such payment was made by the patient and/or third-party payors.

2. Upon proof of a violation of §2111 of this Chapter by a psychologist, the board may order a fine of not more than \$500 for each count or separate offense, plus administrative costs.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

(Name of Psychologist or Group)  
(Address)  
(Telephone Number)

**DISCLOSURE OF FINANCIAL INTEREST**  
As Required by R. S. 37:1744; R. S. 37:1745, and  
LAC 46:LXIII.2101-2115

TO: \_\_\_\_\_ Date: \_\_\_\_\_  
(Name of Patient to be Referred)  
\_\_\_\_\_  
(Patient Address)

Louisiana law requires psychologists and other health care providers to make certain disclosures to a patient when they refer a patient to another health care provider or facility in which the psychologist has a significant financial interest. (I am/we are) referring you, or the named patient for whom you are legal representative, to:

\_\_\_\_\_  
(Name and Address of Provider to Whom Patient is Referred)

to obtain the following health care services, products or items:

\_\_\_\_\_  
(Purpose of the Referral)

(I/we) have a financial interest in the health care provider to whom we are referring you, the nature and extent of which are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PATIENT ACKNOWLEDGEMENT**

I, the above named patient, or legal representative of such patient, hereby acknowledge receipt, on the date indicated and prior to the described referral, of a copy of the foregoing Disclosure of Financial Interest.

\_\_\_\_\_  
(Signature of Patient or Patient's Representative)

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1744, R.S. 37:1745.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 21:

Inquiries concerning the proposed rules may be directed in writing to: Brenda C. Rockett, Executive Director, Board of Examiners of Psychologists, 11924 Justice Avenue, Suite A, Baton Rouge, LA 70816.

Interested persons may submit data, views, arguments, information or comments on the proposed rules, in writing, to the Board of Examiners of Psychologists, 11924 Justice Avenue, Suite A, Baton Rouge, LA 70816. Written comments must be submitted to and received by the board with 30 days of 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.

James W. Quillin, Ph.D.  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Disclosure of Financial Interests and Prohibited  
Payments**

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

It is not anticipated that the proposed rule amendments will result in any additional costs to the Board of Examiners of Psychologists.

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

It is not anticipated that the proposed rule amendments will have any effect on the board's revenue collections.

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

The proposed rules implement laws which prohibit, with certain exceptions, psychologists from paying or receiving any form of remuneration in return for referral of patients to or from another health care provider. Psychologists who make referrals, not otherwise prohibited by these proposed rules, to another health care provider in which they have a significant financial interest would be required by these proposed implementing rules to furnish referred patients with written notice of such financial interest prior to making the referral. In such cases, the written disclosure of financial interest required by these implementing rules may result in additional clerical and/or administrative work for the referring psychologist. There is no known available data of the number of psychologists who may be affected by implementation of these proposed rules or on the number of psychologists who would be required to disclose significant financial interests in making referrals not otherwise prohibited by these rules. Consequently, it is not possible to estimate the effect on costs psychologists may incur as a result of the proposed rules. If implemented, however, these proposed rules would be anticipated to impact the receipts or income of psychologists or other health care providers who currently receive income or other remuneration in return for referral practices which would be prohibited under these proposed rules. However, there is no available data known to exist indicating either the number of psychologists or other health care providers who might be so affected or the amount of income or other remuneration which would be affected. Thus, an estimate of the impact on receipts and/or income of persons or groups who may be affected by the proposed rules is not possible.

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

It is not anticipated that the proposed rules will have any significant impact on competition or employment in either the public or private sector.

James W. Quillin, Ph.D.  
Chairman  
9509#067

David W. Hood  
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Health and Hospitals
Office of Public Health

Sanitary Code—Mechanical Wastewater (Chapter XIII)

In accordance with R.S. 40:4, 40:5, and the provisions of Chapter XIII of the State Sanitary Code, the State Health Officer is proposing that the following amendment to the listing entitled "Mechanical Wastewater Treatment Plants for Individual Homes-Acceptable Units" be made:

Amend the listing to include additional manufacturer and associated plant model(s)/series, specified as follows:

Table with 3 columns: MANUFACTURER, PLANT DESIGNATION, RATED CAPACITY. Rows include Ecological Tanks, Inc. with models A.S. 500, 600, 750, 1000, 1500 and their respective capacities (500 GPD to 1500 GPD).

The specified change is in compliance with the requirements set forth in Section 6.6 of Appendix A of Chapter XIII of the State Sanitary Code.

Comments regarding the proposed rule should be addressed to C. Russell Rader, P.E., Chief Engineer, Office of Public Health, Department of Health and Hospitals, Box 60630, New Orleans, LA 70160.

A public hearing will be held on October 30, 1995 at 3 p.m. on the third floor of the Department of Transportation and Development Annex Building, 1201 Capitol Access Road, Baton Rouge, LA to hear comments on the proposed rule.

Rose V. Forrest
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Sanitary Code—Mechanical Wastewater

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

There are no implementation costs.

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

There is no effect on revenue collections.

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

The consumer will be afforded a wider selection of products, thus enhancing competition and possibly resulting in reduced costs for the related products and services to the consumer.

V. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition will be stimulated by the presence of the new product. Effect on employment cannot be estimated.

Eric T. Baumgartner, M.D., M.P.H.
Assistant Secretary
509#075

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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

Adult Denture Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing previously reimbursed providers for partial casts and for new dentures once every five years. The bureau is revising the service coverage for adult dentures effective for dates of service July 13, 1995 and after to require a minimum of seven years before a new denture may be reimbursed for adult Medicaid patients and to eliminate coverage of partial casts.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes the following regulations in the Adult Dental Program. New dentures are only allowable seven years after the original dentures are provided.

1. New dentures are only allowable seven years after the original dentures are provided. A combination of two denture relines or one complete denture and one reline per arch may be allowed in a seven year period, as prior authorized by BHSF or its designee.

2. For relines, at least one year shall have elapsed since the denture was constructed or last relined. In addition the Adult Dental Program shall no longer reimburse for cast partial dentures (Procedure Codes 05213 and 05214). Any of the above services previously authorized but not completed prior to July 13, 1995 shall not be reimbursed.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule. A public hearing will be held on this matter at 9 a.m., Friday, October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the

receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Adult Dental Program**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for adult denture services by approximately \$273,744 for SFY 1995-1996; \$284,694 for SFY 1996-1997; and \$305,176 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for adult denture services will decrease by approximately \$706,716 for SFY 1995-1996; \$734,934 for SFY 1996-1997 and \$755,290 for SFY 1997-1998.

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

It is anticipated that the providers of the Adult Denture Program will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#093

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Emergency Medical Transportation Air Ambulance Service**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The bureau reimburses air ambulance services including helicopter and fixed wing air ambulance services in accordance with the provider's usual and customary rate as determined by the Medicaid Program minus the amount which any third party coverage would pay. Effective July 7, 1995, the department established a new methodology based on Medicare's reimbursement and implemented standards for payment governing the reimbursement of air medical services. The department is now proposing to adopt these provisions as a permanent rule under the Administrative Procedure Act. The department has now determined that this reimbursement methodology must be repealed and a new methodology established based on Medicare's reimbursement.

**Proposed Rule**

The Department of Health and Hospitals, Bureau of Health Services Financing establishes the following regulations in the Emergency Medical Transportation Program for the reimbursement of air ambulance services.

**I. Reimbursement Methodology**

Medicaid will pay a base rate plus mileage according to the rates in effect for Medicare as of January 1, 1995. Separate reimbursement for oxygen and disposable supplies will be made when the provider incurs these costs. Reimbursement for these services will be made in accordance with the rates previously established by Medicare and approved by Medicaid effective April 1, 1995.

**II. Standards for Payment**

1. Helicopters and fixed winged aircraft must be certified by the Department of Health and Hospitals, Bureau of Health Services Financing in order to receive Medicaid reimbursement and all air ambulance services must be provided in accordance with the state law and regulations governing the administration of these services. All air ambulance services must comply with the state law and regulations governing the personnel certifications of the emergency medical technicians administered by the Department of Health and Hospitals' Bureau of Emergency Medical Services.

2. The Prior Authorization Unit of the fiscal intermediary must approve the medical necessity for all air ambulance services.

3. The Prior Authorization Unit of the fiscal intermediary must review air ambulance claims and either approve or disapprove these services based on the following requirements:

a. Air ambulance services are covered only if speedy admission of the patient is essential and the point of pick-up of the patient is inaccessible by land vehicle or great distances or other obstacles are involved in getting the patient to the nearest hospital with appropriate facilities.

b. Payment for air mileage will be limited to actual air mileage from the point of pick-up to the point of delivery of the patient.

c. Payment for a round trip transport on the same day between two hospitals, is the base rate plus the round trip mileage.

d. If a land ambulance must be used for part of the transport, the land ambulance provider will be reimbursed separately according to rules and regulations for ground

ambulance services.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Friday October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Emergency Medical Transportation  
Air Ambulance Service**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for emergency medical transportation air ambulance services by approximately \$149,372 for SFY 1995-1996; \$155,347 for SFY 1996-1997; and \$166,523 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for emergency medical transportation air ambulance services will decrease by approximately \$385,628 for SFY 1995-1996; \$401,053 for SFY 1996-1997 and \$412,133 for SFY 1997-1998.

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

It is anticipated that the providers of the emergency medical transportation air ambulance services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no effect on competition and employment.

Thomas D. Collins  
Director  
509#097

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

Professional Service Program—Chiropractic Services

The Department of Health and Hospitals, Office of the

Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing established chiropractic services under the Professional Services Program effective January 1, 1993 (*Louisiana Register*, Volume 16, Number 12) to provide coverage and reimbursement for medically necessary chiropractic care for Medicaid recipients. This rule provides for: 1) unlimited services to EPSDT recipients; 2) service limits for adults office visits and 25 treatments with provision for extensions if medically necessary; 3) a diagnostic radiology services limit of \$225 per year; and 4) reimbursement in accordance with a maximum fee schedule. The bureau now proposes it is necessary to establish the requirement of prior authorization for all treatment of Medicaid recipients under the age of 21, to reduce both the level of allowable services, and to reduce the reimbursement for certain procedure codes under the maximum fee schedule.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the January 1, 1993 rule on chiropractic care and establishes the following provisions to govern Chiropractic Services under the Professional Services Program.

**A. General Provisions**

1. Chiropractors' services consist of diagnostic and treatment services which are within the scope of practice for chiropractors under state law and regulations.

2. An encounter is defined as any visit in which any of the services listed in the Professional Services Program Manual are rendered which are included under the selected CPT treatment codes.

3. All chiropractic treatment services for recipients under the age of 21 shall be prior authorized.

**B. Service Limits**

1. One diagnostic evaluation per 180 days per recipient not to exceed two diagnostic evaluations per calendar year per recipient will be allowed.

2. Radiology services are limited to \$50 per recipient per 180 days not to exceed \$100 per calendar year per recipient.

3. Recipients 21 years of age and older are allowed 18 chiropractic encounters or treatment services per calendar year. No extension of this number shall be granted.

**C. Reimbursement**

1. Reimbursement is provided to chiropractors who are licensed by the state to provide chiropractic care and services and who are enrolled in the Medicaid Program as an enrolled

provider.

2. Reimbursement is made in accordance with the following designated CPT codes under a maximum fee schedule for billable codes established by the Professional Services Program for each chiropractic service rendered to a Medicaid eligible individual.

Procedure Code	Proposed Rate
97010	\$ 7.41
97012	\$ 5.31
97014	\$ 7.41
97020	\$ 4.88
97022	\$ 6.65
97024	\$ 4.88
97026	\$ 4.88
97028	\$ 1.66
97039	\$ 6.65
97110	\$ 8.08
97112	\$ 8.08
97122	\$ 3.85
97124	\$ 5.05
97139	\$ 6.65
97221	\$ 2.22
97250	\$ 12.94
97260	\$ 8.00
97261	\$ 3.54
97036	\$ 11.09
97035	\$ 3.85
97034	\$ 6.65
97032	\$ 8.08

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Chiropractic Services**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for chiropractic services by approximately \$2,586,333 for SFY 1995-1996; \$2,689,786 for SFY 1996-1997; and \$2,883,293 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for

chiropractic services will decrease by approximately \$6,677,037 for SFY 1995-1996; \$6,944,119 for SFY 1996-1997 and \$7,135,968 for SFY 1997-1998.

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

It is anticipated that the providers of chiropractic services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#121

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Durable Medical Equipment**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriations Act which states: "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, pre-admission screening, utilization review, and other measures as allowed federal law." This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing adopted a dual reimbursement methodology on April 20, 1993, Volume 19, No. 4 for the Durable Medical Equipment Program which includes prosthetic devices, artificial eyes, braces, medical appliances, equipment, and supplies. Effective for dates of service July 7, 1995 and after, the Bureau of Health Services Financing revised the flat fee component of the reimbursement methodology for durable medical equipment, for Medicaid only recipients, by establishing flat fees at a rate of 80 percent of the Medicare durable medical equipment fee schedule or at a rate of 80 percent of the lowest cost at which the item is widely available. The department is now proposing to adopt as a permanent rule under the Administrative Procedure Act the provisions of the July 7, 1995 emergency rule and its amendments adopted by the August 18, 1995 emergency rule which allow for an exception to the 80 percent of the Medicare DME fee schedule and for 80 percent of the lowest cost at which the item is widely available for the specified



HCPC procedure codes (A4622, A4625, B4150 through B4156, E0450, E0607, E0608, E0630, XX030 through XX072, and Z0451 through Z0500) and which revise the method of reimbursement for certain supplies for wound care and dressings and other medically necessary supply items exclusively designated for home health care. These home health care supplies will now be reimbursed through the Durable Medical Equipment Program, instead of the Home Health Care Program, through which they were formerly reimbursed. Durable Medical Equipment providers may bill for these home health care items only if they are used by a home health agency for services in the home and only if prior authorization is established through the prior authorization mechanism for durable medical equipment. Diapers and blue pads are not reimbursable supply items under the Durable Medical Equipment Program.

### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following regulations governing the reimbursement of Durable Medical Equipment.

1. The flat fee component of the reimbursement methodology for durable medical equipment is to be revised at a rate of 80 percent of the Medicare durable medical equipment fee schedule and the flat fee for certain durable medical equipment items at the lowest cost at which the needed item is widely available.

2. Flat fees for HCPC procedure codes A4622, A4625, B4150 through B4156, E0450, E0607, E0608, E0630, XX030 through XX072, and Z0451 through Z0500 are to be established at a rate of 100 percent of the Medicare durable medical equipment fee schedule amounts or at a rate of 100 percent of the lowest cost at which these items have been determined to be widely available.

3. Wound care supplies and dressings, and other medically necessary supply items exclusively designated for home health care are reimbursable under the Durable Medical Equipment Program, and are not reimbursable under the Home Health Program. Durable Medical Equipment providers must obtain prior authorization through the prior authorization process required under the Durable Medical Equipment Program in order to provide and to be reimbursed for these home health care supplies. These supplies must be used by home health agencies in the home.

4. Diapers and blue pads are not reimbursable supply items under the Durable Medical Equipment Program.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Friday, October 7, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments,

orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Durable Medical Equipment

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that implementation of this proposed rule will result in decreased expenditures for durable medical equipment services by approximately \$839,159 for SFY 1995-1996; \$1,103,398 for SFY 1996-1997; and \$1,182,778 for SFY 1997-1998.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that federal revenue collections for durable medical equipment services will decrease by approximately \$2,166,424 for SFY 1995-1996; \$2,848,602 for SFY 1996-1997 and \$2,927,302 for SFY 1997-1998.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is anticipated that the providers of durable medical equipment services will experience the combined state and federal expenditure decreases shown above for the provision of these services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#094

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

#### Early Periodic Screening Diagnosis and Treatment (EPSDT)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed

rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses providers a flat fee for service for certain EPSDT-related services provided to recipients under 21 years of age. These related services include the provision for eyeglasses and hearing aids. These services are unlimited.

The bureau determined it was necessary to limit coverage for EPSDT eyeglasses to three per year with a provision for extension if medically necessary and to reduce the provider reimbursement fees by 15 percent for the following EPSDT services effective for dates of service July 7, 1995 and after: EPSDT eyeglasses and EPSDT hearing aids.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, limits EPSDT eyeglasses to three per year with provision for extending if medically necessary and reduces reimbursement fees by 15 percent for providers of the following early periodic screening diagnosis and treatment services:

EPSDT Eyeglasses:

Procedure Codes - X6366-X6368; X6370-X6376; X9066-X9068; and X-0089.

EPSDT Hearing Aids:

Procedure Codes - X-0192; V5030; V5040; V5050; V5060; V5070; V5080; V5100; V5120; V5130; V5140; V5150; V5170; V5180; V5190; V5210; V5220; V5230; and V5299

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

A public hearing will be held on this matter at 9 a.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

##### RULE TITLE: Early Periodic Screening Diagnosis and Treatment (EPSDT) Services

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for Early Periodic Screen Diagnosis and Treatment (EPSDT) Services by approximately \$1,247,500 for SFY 1995-1996; \$1,297,400 for SFY 1996-1997; and \$1,390,737 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for Early Periodic Screening Diagnosis and Treatment (EPSDT) Services will decrease by approximately \$3,220,624 for SFY 1995-96; \$3,349,449 for SFY 1996-97 and \$3,441,986 for SFY 1997-1998.

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

It is anticipated that the providers of the Early Periodic Screening Diagnosis and Treatment services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#125

David W. Hood  
Senior Fiscal Analyst

#### NOTICE OF INTENT

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

#### Federally Qualified Health Centers

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing reimburses federally qualified health centers visits and physician visits under the Medicaid Program. Physician visits are limited to 12 medically necessary visits per year for each eligible recipient who is 21 years of age or older. Recipients under the age of 21 are not subjected to program limitations, other than the limitation of medical necessity. The following services have been counted as one of the 12 allowable visits per year for recipients 21 years of age or older:

- A. physician office visit including visits to optometrists;
- B. physician home visit;
- C. consultation from another physician when such consultation is essential for the treatment of the recipient's illness;

D. physician visit in an outpatient hospital setting including emergency room visits due to accidental injury or sudden and serious illness;

E. physician visit in a nursing home: the physician will sign the recipient's chart at the facility on the day of the visit; and

F. family planning services for the following:

1. initial visit to include a physical examination with pelvic, pap smear and counseling;
2. pap smear; and
3. insertion and/or removal of IUD.

Federally qualified health center visits have not been included in the 12 per year physician visits allowable under the Medicaid Program for recipients 21 or older. The department now proposes to include federally qualified health center visits under the 12 allowable visits for Medicaid recipients 21 or older.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, includes each federally qualified health center visit, i.e., encounter, as one of the 12 outpatient physician visits allowable per year for Medicaid eligible who are 21 years of age or older.

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

A public hearing will be held on this matter at 9 a.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Federally Qualified Health Centers

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for federally qualified health centers by approximately \$34,900 for SFY 1995-1996, \$36,296 for SFY 1996-1997, and \$38,907 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for federally qualified health centers will decrease by approximately \$90,100 for SFY 1995-96; \$93,704 for SFY 1996-97 and \$96,293 for SFY 1997-1998.

##### II. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS

##### TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that the providers of federally qualified health centers will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#119

David W. Hood  
Senior Fiscal Analyst

#### NOTICE OF INTENT

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

##### Leave of Absence—Intermediate Care Facility Services for the Handicapped and/or Mentally Retarded

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing provides coverage under the Medicaid Program for Intermediate Care Facility Services for the Handicapped and/or Mentally Retarded (ICF/MR) provided by Intermediate Care Facilities. ICF/MR services are optional under Title XIX of the Social Security Act and states may choose the methodology for providing reimbursement for ICF/MR services. The department reimburses leave of absence days up to 15 days per hospitalization for treatment of an acute condition, and up to 45 days per state fiscal year for other leave days with 14-day limit per temporary absence per recipient when permitted by recipients plan of care. Leave days for the following purposes were limited to 14 days per occurrence and were excluded from the annual 45-day limitation:

1. Special Olympics;
2. Roadrunner sponsored events;
3. Louisiana planned conferences;
4. trial discharge leaves.

Effective July 13, 1995, the department is now lowering these limits as follows: Beds are reserved for up to five days

per hospitalization for treatment of an acute condition; and beds are reserved for up to 22 days per state fiscal year for other leave days with a 14-day limit per temporary absence per recipient when permitted by the recipients plan of care. The previously indicated limit per occurrence and exclusions from the annual limitation are to remain in force.

The following proposed rule proposes to establish the above by limits for the number of payable leave of absence days as permanent rule under the Administrative Procedure Act.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces payments to ICF/MR facilities by limiting the number of payable leave of absence days as follows:

Beds are reserved for up to five days per hospitalization for treatment of an acute condition; and

Beds are reserved for up to 22 days per state fiscal year for other leave days with a 14-day limit per temporary absence per recipient when permitted by the recipients plan of care. Leave days for the following purposes shall be limited to 14 days per occurrence and shall be excluded from the annual 22-day limitation:

1. Special Olympics;
2. Roadrunner sponsored events;
3. Louisiana planned conferences;
4. trial discharge leaves.

Absences for 23 hours or less on a consistent basis could jeopardize continued medical certification for the resident.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Tuesday, October 24, 1995, in the first floor Auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

##### RULE TITLE: Intermediate Care Facility Services-Vendor Payment for Leave of Absence Days

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for ICF/MR facility leave days by approximately \$3,519,037 for SFY 1995-1996; \$3,659,798 for SFY 1996-1997; and \$3,923,087 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for ICF/MR facility leave days will decrease by approximately \$9,084,963 for SFY 1995-1996; \$3,659,798 for SFY 1996-1997 and

\$3,923,087 for SFY 1997-1998.

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

It is anticipated that the providers of the ICF/MR services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#106

David W. Hood  
Senior Fiscal Analyst

#### NOTICE OF INTENT

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

#### Home Health Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing previously reimbursed home health services at interim payment rates established for skilled nursing visits, physical therapy, home health aide visits with annual cost settlement. The cost of covered nonroutine supplies was reimbursed at an interim rate assigned by Medicare annually. The annual cost settlement was 100 percent of allowable cost for covered nonroutine supplies. Effective July 7, 1995 the bureau revised the reimbursement to home health agencies by establishing maximum rates for interim and cost settlement payment amounts established at levels not to exceed the following limits: 1) skilled nursing visits (procedure code X9900) - \$64.54; 2) health aide visits (procedure code X9901) - \$22.81; and 3) physical therapy (procedure code X9926) - \$70.46. Also, the bureau reimbursed the home health agency at an interim rate of 80 percent of allowable billed charges for nonroutine covered supplies (procedure code X9925). Final reimbursement for covered nonroutine supplies was at 80 percent of allowable costs through the cost settlement process except for diapers which were not reimbursable under the

supply cost category for home health services. Effective August 18, 1995 the bureau repealed all prior rules governing the reimbursement of home health services and is adopting an emergency rule which includes prospective maximum rates, increased rate for the skilled nursing and the health aide visits; abolishes the interim rate and cost settlement process; and establishes the provision of medically necessary supplies for the delivery of a home health service under the prior authorization mechanism of the Durable Medical Equipment Program. The bureau is now proposing to adopt the above provisions as a permanent rule under the Administrative Procedure Act.

### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals all prior rules governing the reimbursement of home health services and adopts the following provisions to govern the reimbursement of home health services under the Medicaid Program.

1. The bureau reimburses home health agencies for allowable services by and establishes the following prospective rates: 1) skilled nursing visits (procedure code X9900) - \$68.65; 2) health aide visits (procedure code X9901) - \$24.38; and 3) physical therapy (procedure code X9926) - \$70.46.

2. The home health agency is required to insure that the families are instructed on a maintenance home exercise program which has been established by the treating physical therapist.

3. The bureau reimburses medically necessary supplies through the Durable Medical Equipment Program which requires prior authorization for the item. Items may be authorized to an existing durable medical equipment provider or to home health agencies which enroll as durable medical equipment providers.

a. Diapers and blue pads are not reimbursable as Durable Medical Equipment items.

b. Certain supplies for wound care and dressing will be covered under the Durable Medical Equipment Program but will be authorized exclusively for the use of home health agencies when delivering a home health service.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule. A public hearing will be held on this matter at 9 a.m., Friday, October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Home Health Services Program

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for home health services by approximately \$3,568,502 for SFY 1995-1996; \$3,711,243 for SFY 1996-1997; and \$3,978,234 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for home health services will decrease by approximately \$9,212,667 for SFY 1995-96; \$9,581,173 for SFY 1996-1997 and \$9,845,878 for SFY 1997-1998.

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

It is anticipated that the providers of home health services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#092

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

#### Hospital Program—Acute Inpatient Hospital Services, Outlier

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Medicaid Program reimburses hospitals for the catastrophic costs associated with medically necessary services provided to children under six years of age received in a disproportionate share hospital and for services to infants one year or under in all acute care general hospitals. An outlier payment was calculated on an individual case basis through

which if covered charges for medically necessary services exceeded 200 percent of the prospective payment, payment was made at cost. This payment methodology was implemented effective July 1, 1994 under Prospective Hospital Reimbursement Methodology rule (*Louisiana Register*, June 20, 1994, Volume 20, Number 6). The department is proposing to amend this outlier reimbursement methodology by initiating a policy whereby the covered charges of each qualifying outlier case must exceed \$150,000 in addition to exceeding 200 percent of the prospective payment. Qualifying outlier cases will be reimbursed the marginal cost associated with the excess cost above the prospective payment amount. Marginal cost is considered to be 55 percent.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends its reimbursement methodology for qualification and calculation of outlier payments for catastrophic costs associated with medically necessary services provided to children under six in disproportionate share hospitals and for services to infants one year or under in all general acute care hospitals. To qualify for an outlier payment the covered charges for the case must exceed both \$150,000 and 200 percent of the prospective payment. Outlier cases qualifying under the above criteria will be reimbursed the marginal cost associated with the excess cost above the prospective payment amount. Marginal cost is considered to be 55 percent of cost.

Interested persons may submit comments: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

##### RULE TITLE: Hospital Program—Acute Inpatient Hospital Services, Outlier

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for hospital inpatient services by approximately \$4,068,084 for SFY 1995-1995; \$4,230,807 for SFY 1996-1997; and \$4,535,177 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for hospital inpatient services will decrease by approximately \$10,502,416 for SFY 1995-1996; \$10,922,513 for SFY 1996-1997 and

\$11,224,276 for SFY 1997-1998.

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

It is anticipated that the providers of the hospital inpatient services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition or employment.

Thomas D. Collins  
Director  
9509#114

David W. Hood  
Senior Fiscal Analyst

### NOTICE OF INTENT

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

##### Hospital Program—Inflation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid Program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing provides coverage under the Medicaid Program for inpatient services provided by acute inpatient hospitals as defined in 42 CFR Subpart B, hospital services subject to the prospective payment systems for inpatient operating costs and inpatient capital-related costs, Section 412.23(e). Inpatient hospital services are mandatory under Title XIX of the Social Security Act. The department has provided reimbursement for inpatient acute hospital services according to prospective rates established as allowable under the prospective hospital reimbursement methodology rule (*Louisiana Register*, June 20, 1994, Volume 20, Number 6). The payment rates are extended to the midpoint of the payment year using the DRI Type Hospital Marketbasket Index. The department is now proposing to amend this reimbursement methodology for inpatient acute hospital services by initiating a policy whereby the payment rates will be trended to the midpoint of the payment year using the lowest of DRI Type Hospital Marketbasket Index, the Consumer Price Index - All Urban Consumers or the

Medicare PPS Marketbasket Index. Therefore this proposed rule amends the provision in the prospective hospital reimbursement methodology rule which determines how payment rates are trended forward.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, will inflate inpatient per diem rates to the midpoint of the payment year using the lowest of the DRI Type Hospital Marketbasket Index, the Consumer Price Index - All Urban Consumers or the Medicare PPS Marketbasket Index.

Interested persons may submit comments: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views and arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Hospital Program—Inflation

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for inpatient hospital services by approximately \$2,010,240 for SFY 1995-1996; \$2,090,650 for SFY 1996-1997; and \$2,241,054 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for inpatient hospital services will decrease by approximately \$5,189,760 for SFY 1995-1996; \$5,397,350 for SFY 1996-1997 and \$5,546,466 for SFY 1997-1998.

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

It is anticipated that the providers of the inpatient hospital services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

##### ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9#113

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

#### Hospital Program—Median

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing provides coverage under the Medicaid Program for inpatient services provided by acute inpatient hospitals as defined in 42 CFR Subpart B, hospital services subject to the prospective payment systems for inpatient operating costs and inpatient capital-related costs Section 412.23(e). Inpatient hospital services are mandatory under Title XIX of the Social Security Act. The department has provided reimbursement for inpatient acute hospital services according to prospective rates established as allowable under the prospective hospital reimbursement methodology rule (*Louisiana Register*, June 20, 1994, Volume 20, Number 6). The current methodology contains provisions which established a transition period whereas the Bureau of Health Services Financing blends rates above the weighted median per diem rate using 20 percent of the hospital specific per diem operating cost and 80 percent of the weighted median per diem rate for state fiscal year 1995-1996 and using 10 percent of the hospital specific per diem operating cost and 90 percent of the weighted median per diem rate for state fiscal year 1996-1997. The department is now proposing to amend this reimbursement methodology for inpatient acute hospital services by eliminating the transition period whereby the department will reimburse no inpatient acute hospital above the weighted median per diem rate. The department will establish a weighted average per diem rate based on estimated payments under capped weighted medium per diem rates and will reimburse no inpatient acute hospital above the weighted average per diem rate. Specialty hospitals will be reimbursed at the lowest blended per diem rate for each specialty hospital category. For the purpose of this proposed rule, specialty hospitals are designated as long term hospitals, rehabilitation hospitals and Children's Hospital in New Orleans. This action is necessary to avoid a budget deficit in the medical assistance programs. Therefore this proposed rule deletes the provision in the prospective hospital reimbursement methodology rule which established blending for hospitals above peer group

weighted median per diem rates.

### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will no longer reimburse acute hospitals for inpatient services above the peer group weighted median per diem rate for inpatient acute hospital services. The department will establish a weighted average per diem rate based on estimated payments under a capped weighted median per diem rate and will reimburse no inpatient acute hospital above the weighted average per diem rate. Medicaid per diem rates for inpatient acute hospitals with per diem rates above the peer group weighted average per diem rate will be reimbursed at the peer group weighted average per diem rate. Specialty hospitals will be reimbursed at the lowest blended per diem rate for each specialty hospital category. For the purpose of this proposed rule, specialty hospitals are designated as long term hospitals, rehabilitation hospitals and Children's Hospital in New Orleans.

Interested persons may submit comments: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Hospital Program—Median

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for inpatient hospital services by approximately \$8,384,315 for SFY 1995-1996; \$8,719,687 for SFY 1996-1997; and \$9,346,992 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for inpatient hospital services will decrease by approximately \$21,645,465 for SFY 1995-1996; \$22,511,284 for SFY 1996-1997 and \$23,133,218 for SFY 1997-1998.

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

It is anticipated that the providers of the inpatient hospital services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#115

David W. Hood  
Senior Fiscal Analyst

### NOTICE OF INTENT

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

#### Hospital Program—Out-of-State Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing provides reimbursement for out-of-state hospital services at the rate of 72 percent of the billed charges. The bureau is now proposing to revise the reimbursement for out-of-state hospital services by reducing the payment for these services. Reimbursement for outpatient hospital services is being reduced to 50 percent of billed charges. The reimbursement for inpatient hospital services is being reduced to the lesser of 50 percent of billed charges or the inpatient Medicaid per diem rate of the state wherein the services are provided. If the state wherein the inpatient services are provided does not use a per diem rate payment methodology, the bureau will reimburse the out-of-state hospital 50 percent of the billed charges. This action is being taken to avoid a budget deficit in the medical assistance programs.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses out-of-state outpatient hospital services 50 percent of billed charges and reimburses out-of-state inpatient hospital services the lower of 50 percent of billed charges or the Medicaid per diem rate of the state wherein the services are provided. If the state wherein the inpatient services are provided does not use a per diem rate payment methodology, the bureau will reimburse the out-of-state hospital 50 percent of the billed charges.



Interested persons may submit comments: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

**RULE TITLE: Hospital Program—Out-of-State Services**

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

It is anticipated that implementation of this propose rule will result in decreased expenditures for out-of-state hospital services by approximately \$963,735 for SFY 1995-1996; \$1,002,285 for SFY 1996-1997; and \$1,074,391 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for out-of-state hospital services will decrease by approximately \$2,488,010 for SFY 1995-1996; \$2,587,562 for SFY 1996-1997 and \$2,659,050 for SFY 1997-1998.

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

It is anticipated that the providers of the out-of-state hospital services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
1509#112

David W. Hood  
Senior Fiscal Analyst

Assistance Program as authorized by R.S. 46:153 et seq. and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing provides reimbursement for outpatient hospital services. These services other than those services subject to a fee schedule had been paid at the interim rate of 72 percent of the billed charges and adjusted to allowable cost through the cost report settlement process. The bureau is now proposing to reduce the interim payment for outpatient hospital services by 17 percent. Final reimbursement for outpatient hospital services shall be adjusted to 83 percent of allowable cost through the cost settlement process except those subject to the Medicare fee schedule for laboratory which will be reduced 10 percent and outpatient surgeries subject to the Medicaid outpatient surgery listed.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses outpatient hospital services the interim rate of 60 percent of billed charges except those services subject to the fee schedule for laboratory services which will be reduced 10 percent and outpatient surgeries subject to the Medicaid outpatient surgery list. Final reimbursement for outpatient services shall be adjusted to 83 percent of allowable cost through the cost report settlement process except those services subject to the Medicare fee schedule for laboratory services and outpatient surgeries.

Interested persons may submit comments: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**NOTICE OF INTENT**

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

**Hospital Program—Outpatient Services**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following emergency rule under the Medical

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Hospital Program—Outpatient Services**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for out-patient hospital services by approximately \$6,996,034 for SFY 1995-1996; \$7,275,876 for SFY 1996-1997; and \$7,799,311 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for out-patient hospital services will decrease by approximately \$18,061,395 for SFY 1995-1996; \$18,783,851 for SFY 1996-1997 and \$19,302,804 for SFY 1997-1998.

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

It is anticipated that the providers of the out-patient hospital service will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#111

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Inpatient Psychiatric Services**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The department adopted comprehensive regulations governing the provision of all inpatient psychiatric services under the Medicaid Program which included pre-certification and length of stay requirements as well as patient criteria governing the admission, extension and discharge of recipients

in need of these services on June 20, 1995 (*Louisiana Register* Volume 21, Number 6). The department determined that it was also necessary to limit inpatient psychiatric services to a maximum of 30 days per year for Medicaid recipients under 21 years of age and over 65 years of age and over. This limitation applies to inpatient psychiatric services provided other than in a distinct part psychiatric unit of an acute care hospital and provision for extension is allowed if medically necessary for the recipients under 21 years of age. An emergency rule was adopted effective July 13, 1995 (*Louisiana Register* Volume 21 Number 7) and the department now seeks to adopt these changes as a permanent rule under the Administrative Procedure Act.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, limits inpatient psychiatric services to a maximum of 30 days per calendar year per recipient. This limitation applies to Medicaid recipients who are under 21 years of age and 65 years of age and over and to inpatient psychiatric services provided other than in a distinct part psychiatric unit. Persons under 21 years of age may receive additional days if medically necessary. The fiscal intermediary shall continue to review each inpatient psychiatric admission to determine the recipient's eligibility for these services in accordance with the above as well as the previously established regulations for inpatient psychiatric services.

Interested persons may submit comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9 a.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Inpatient Psychiatric Services**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for inpatient psychiatric services by approximately \$4,981,373 for SFY 1995-1996; \$5,180,628 for SFY 1996-1997; and \$5,553,329 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for inpatient psychiatric services will decrease by approximately \$12,860,222 for SFY 1995-1996; \$13,374,631 for SFY 1996-1997 and \$13,744,140 for SFY 1997-1998.

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

It is anticipated that the providers of inpatient psychiatric services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#116

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**KIDMED Medical Screening**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses KIDMED providers an all-inclusive fee of \$60 per EPSDT/KIDMED medical screening, whether performed by or under the supervision of a licensed physician, or by a certified physician assistant or registered nurse within their scope of practice permitted by state law, for recipients under 21 years of age in accordance with a periodicity schedule established under federal and state guidelines. Louisiana's fees have been significantly higher than that in other states.

The bureau revised the fee for reimbursement of EPSDT/KIDMED medical screening effective for dates of service July 7, 1995 and after. (*Louisiana Register*, Volume 21 Number 7). The fee for EPSDT/KIDMED medical screenings performed by or under the supervision of a licensed physician, or by a certified physician assistant or registered nurse shall be reduced to \$51 per EPSDT/KIDMED medical screening.

**Proposed Rule**

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

KIDMED providers \$51 under the Early Periodic Screening Diagnosis and Treatment Program for medical screenings of Medicaid recipients under 21 years of age, which are performed by or under the supervision of a licensed physician, or by a certified physician assistant or registered nurse within their scope of practice permitted by state law.

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

A public hearing will be held on this matter at 9 a.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

**RULE TITLE: Early Periodic Screening Diagnosis Treatment (EPSDT) KIDMED Medical Screening Services**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for Early Periodic Screening Diagnosis and Treatment Program (EPSDT) KIDMED Medical Screening services by approximately \$944,738 for SFY 1995-1996; \$982,527 for SFY 1996-1997; and \$1,053,211 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for Early Periodic Screening Diagnosis and Treatment (EPSDT) KIDMED Medical Screening services will decrease by approximately \$2,438,993 for SFY 1995-96; \$2,536,553 for SFY 1996-97 and \$2,606,632 for SFY 1997-1998.

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

It is anticipated that the providers of the Early Periodic Screening Diagnosis and Treatment Program (EPSDT) KIDMED Medical Screening will experience the combined state and federal expenditure decreases shown above for the provision of these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#123

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

#### Lab and X-ray Reimbursement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals provides reimbursement for lab and x-ray services. Payment for lab services is made on the basis of the lower of: billed charges, state maximum amount, or Medicare fee schedule amount. Payment for x-ray services is made on a flat fee basis. The bureau is now proposing to reduce by 15 percent the reimbursement for lab and x-ray services except for those services provided in an outpatient hospital setting.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services, reduces reimbursement by 15 percent for lab and x-ray services except for those services provided in an outpatient hospital setting.

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

A public hearing will be held on this matter at 9 a.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Lab and X-ray Reimbursement

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

It is anticipated that implementation of this proposed rule will

result in decreased expenditures for lab and x-ray services by approximately \$2,303,400 for SFY 1995-1996; \$2,395,536 for SFY 1996-1997; and \$2,567,874 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for lab and x-ray services will decrease by approximately \$5,946,600 for SFY 1995-96; \$6,184,464 for SFY 1996-97 and \$6,355,326 for SFY 1997-1998.

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

It is anticipated that the providers of the lab and x-ray service will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#124

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

#### Mental Health Clinics

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses mental health clinics for each service performed for a recipient. The bureau is proposing to revise the program to allow reimbursement for a maximum of one service per day per recipient. Additionally, there will be no reimbursement for the following services: occupational therapy, recreational therapy, music therapy or art therapy. Billing codes for these services are X0081, X0082, X0083 and X0084 respectively.

#### Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses mental health clinics for only one procedure per day per recipient. Occupational therapy, recreational therapy, music therapy, and art therapy are not

reimbursable services under the Medicaid Program.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Friday October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Mental Health Clinics**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for Mental Health Clinic services by approximately \$139,600 for SFY 1995-1996; \$145,184 for SFY 1996-1997; and \$155,629 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for Mental Health Clinic services will decrease by approximately \$360,400 for SFY 1995-1996; \$374,816 for SFY 1996-1997 and \$385,171 for SFY 1997-1998.

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

It is anticipated that the providers of the Mental Health Clinic will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#100

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Mental Health Rehabilitation Program—Services  
for Nursing Facility Residents**

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

to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule to revise certain provisions of the Mental Health Rehabilitation Program in order to incorporate the program guidelines and interpretations of the Health Care Financing Administration. The rule was adopted on April 20, 1993 and published in the *Louisiana Register*, Volume 19, Number 4. A subsequent rule established service limits for certain mental health rehabilitation services and revised the definition of treatment integration to ensure the inclusion of appropriate therapeutic principles and skills for this service component to generate cost savings in the program. This rule was adopted on December 20, 1994 (*Louisiana Register*, Volume 20, Number 12). The Office of Mental Health and the Office of the Secretary for the Department of Health and Hospitals adopted a rule defining adults with serious mental illness and children with emotional/behavioral disorders in September 20, 1994 (*Louisiana Register*, Volume 9, Number 9). The department is now proposing that a nursing facility resident receive mental health rehabilitation services only if the individual has been through the pre-admission screening and annual resident review process and has been identified as needing specialized mental health services.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing requires that a nursing facility resident must be identified as needing specialized mental health services through the pre-admission screening and annual resident review process in order to receive any services under the Mental Health Rehabilitation, Clinic or any other active mental health treatment program.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

**RULE TITLE: Mental Health Rehabilitation Program Services  
for Nursing Facility Residents**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for mental health rehabilitation services for nursing facility residents by approximately \$229,901 for SFY 1995-1996; \$239,097 for SFY 1996-1997; and \$256,298 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for mental health rehabilitation services for nursing facility residents will decrease by approximately \$593,527 for SFY 1995-1996; \$617,268 for SFY 1996-1997 and \$634,322 for SFY 1997-1998.

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

It is anticipated that the providers of the mental health rehabilitation services for nursing facility residents will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#107

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Home and Community Based Services Waivers—Mentally  
Retarded/Developmentally Disabled Waiver**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing has provided that approved slots in Home

and Community Based Services waivers which are vacated may be filled by allocating the vacated slot to the next available person on the appropriate waiting list. That person, if found eligible, became the next occupant of the slot. This process has been followed because participation in each Home and Community Based Services waiver is limited to a specific number of participants. Filling slots as soon as they were vacated allowed participation by a maximum number of participants. Restriction of number of participants by allocating slots is necessary to remain within the number of participants specified in the waiver approval.

The bureau is proposing to revise its policy on vacated slots in the Mentally Retarded/Developmentally Disabled (MR/DD) waiver by mandating that vacated slots shall not be filled except that the eligibility determination process shall be completed in the following circumstances: (1) for those persons whose applications for waiver services were filed in the parish BHSF office prior to July 13, 1995; and (2) for those foster children who have been designated by court order and who are in the custody of the Office of Community Services for whom that agency will provide the state funds required to match federal financial participation for the waiver.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall not fill vacated slots in the MR/DD waiver except that the eligibility determination process shall be completed in the following circumstances: (1) for those persons whose applications for waiver services were filed in the parish BHSF office prior to July 13, 1995; and (2) for those foster children who have been designated by court order and who are in the custody of the Office of Community Services for whom that agency will provide the state funds required to match federal financial participation for the waiver.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Home and Community Based Services  
Waivers—Mentally Retarded/Developmentally Disabled Waiver**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for HCBS MR/DD waiver

services by not filling vacancies by approximately \$51,549 for SFY 1995-1996; \$53,611 for SFY 1996-1997; and \$57,468 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for HCBS MR/DD waiver services will decrease by approximately \$133,083 for SFY 1995-1996; \$138,406 for SFY 1996-1997 and \$142,230 for SFY 1997-1998.

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

It is anticipated that the providers of the HCBS MR/DD waiver service will experience the combined state and federal expenditure decreases shown above for the provision of these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#104

David W. Hood  
Senior Fiscal Analyst

### NOTICE OF INTENT

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

**Home and Community Based Services Waivers—Mentally Retarded/Developmentally Disabled Waiver—Habilitation/Supported Employment**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has provided Habilitation/Supported Employment services to clients who meet the following conditions: 1) deinstitutionalized from a nursing or ICF/MR facility, and 2) not eligible or has been referred and rejected for participation in Section 110 of the Rehabilitation Act of 1973 or programs funded under P.L. 4-142. Services provided under Habilitation/Supported Employment included Intense Training (levels 1-4), Individual Job/Follow-along, and Enclave/Mobile work crew.

The bureau is now proposing to revise services covered

under Habilitation/Supported Employment to eliminate reimbursement for Individual Job/Intense Training.

#### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing shall not provide reimbursement for Individual Job/Intense Training (levels 1-4) under Habilitation/Supported Employment for participants in the MR/DD Home and Community Based Services waiver.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

**RULE TITLE: Home and Community Based Services Waiver Program—Mentally Retarded/Developmentally Disabled Waiver—Habilitation/Supported Employment**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for habilitation supported employment services by approximately \$33,592 for SFY 1995-1996; \$34,936 for SFY 1996-1997; and \$37,449 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for habilitation supported employment services will decrease by approximately \$86,723 for SFY 1995-1996; \$90,192 for SFY 1996-1997 and \$92,684 for SFY 1997-1998.

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

It is anticipated that the providers of the habilitation supported employment will experience the combined state and federal expenditure decreases shown above for the provision of these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#103

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

**Home and Community Based Services Waiver—Mentally  
Retarded/Developmentally Disabled  
Waiver—Reimbursement Reductions**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement in the MR/DD Waiver Program for certain habilitative services: 1) supported employment follow-along and enclave/mobile crew, 2) prevocational habilitation, and 3) day habilitation using rate structures recommended by the Office for Citizens with Developmental Disabilities. The bureau is now proposing to revise its reimbursement for these services by reducing the rates by 10 percent.

### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces reimbursement rates by 10 percent for the following habilitation services: 1) habilitation/supported employment follow-along and enclave/mobile crew, 2) prevocational habilitation, and 3) day habilitation.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

**RULE TITLE: Home and Community Based Services Waiver  
Program—Mentally Retarded/Developmentally Disabled  
Waiver Program Reimbursement Reductions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that implementation of this proposed rule will result in decreased expenditures for MR/DD waiver services by approximately \$101,928 for SFY 1995-1996; \$106,006 for SFY 1995-1997; and \$113,632 for SFY 1997-1998.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that federal revenue collections for MR/DD waiver services will decrease by approximately \$263,145 for SFY 1995-96; \$273,670 for SFY 1996-97 and \$281,231 for SFY 1997-1998.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
It is anticipated that the providers of the MR/DD waiver services will experience the combined state and federal expenditure decreases shown above for the provision of these services.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#102

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

**Emergency Medical Transportation  
Program—Nonemergency Ambulance Service**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.



The bureau provides reimbursement for nonemergency ambulance services. Payment for these services is the amount of the provider rate for the service established by the bureau minus the amount which any third party coverage would pay.

The bureau is now proposing to reduce by 20 percent the established provider rate for nonemergency ambulance services.

#### Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing, reduces by 20 percent the established provider rate for nonemergency ambulance transportation services.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Friday October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

##### RULE TITLE: Emergency Medical Transportation Program—Nonemergency Ambulance Service

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

It is estimated that implementation of this proposed rule will result in decreased expenditures for emergency medical transportation program nonemergency ambulance services by approximately \$320,965 for SFY 1995-1996; \$333,804 for SFY 1996-1997; and \$357,818 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for emergency medical transportation program nonemergency ambulance services will decrease by approximately \$828,624 for SFY 1995-1996; \$861,769 for SFY 1996-1997 and \$885,577 for SFY 1997-1998.

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

It is anticipated that the providers of the emergency medical transportation program nonemergency ambulance services will experience the combined state and federal expenditure decreases shown above for the provision of these services.

#### ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
09#096

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

#### Nursing Facility Services Reimbursement

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

The Bureau of Health Services Financing established the current prospective reimbursement methodology for private nursing facility services effective August 1, 1984 by rule as published in the June 20, 1994 issue of the *Louisiana Register* (Volume 10, Number 6, pages 467-468). This methodology utilizes a base rate determined according to a uniform recipient level of care designation (Intermediate Care-I, Intermediate Care-II and Skilled Nursing) which is adjusted by specific economic indices. Subsequently, the provisions of nursing home reform as mandated by the Omnibus Budget Reconciliation Act of 1987 were established by rule in the December 20, 1990 issue of the *Louisiana Register* (Volume 16, Number 12, page 1061). In addition, subsequent rules have been adopted for specialized nursing facility levels of care for specific patient types (SN-Infectious Disease, SN-Technology Dependent Care and SN-Neurological Rehabilitation Treatment Program).

The following emergency rule repeals the August 1, 1984 rule and adopts provisions for private nursing facility services which re-establish a prospective cost-related methodology based on specific cost categories for each level of care and specifies the inflationary adjustment mechanism or recalculation period. Within this framework the following changes are included: the new categories consist of three direct and five indirect resident care costs and the incentive factor; the annual wage for nonsupervisory service workers is deleted as a single component but the following categories where these and other costs are incorporated, i.e., housekeeping/linen/laundry, other dietary, plant operation and maintenance, administrative and general are established; nursing services cost are limited to one category. This revision of the methodology represents an improved and more efficient manner of determining cost factors reimbursable under the Medicaid Program. The calculation of the incentive factor remains at 5 percent but excludes building costs from the computation. The percentile to be utilized are changed from the single current 60th percentile to the following percentiles: direct resident care costs (80th); indirect resident care costs are at the 60th percentile except housekeeping/linen/laundry/(70th). The required nursing service hours remain at the current levels: the intermediate care levels one and two remain at 2.35, and the skilled nursing level continues to be 2.6.

The above changes were implemented through emergency rulemaking on January 20, 1995 and May 1, 1995 (*Louisiana Register*, Volume 21, Numbers 1 and 5).

The current rules for specialized levels of nursing facility care, i.e., Technology Dependent Care, Infectious Disease, and the Neurological Rehabilitation Treatment Program are not revised in the following rule.

### Proposed Rule

The Bureau of Health Services Financing repeals the August 1, 1984 rule governing reimbursement for private nursing facility services and proposes to adopt the following methodology and provisions to govern reimbursement of these services for Medicaid recipients. Reimbursement for the nursing home reform requirements of the Omnibus Budget Reconciliation Act of 1987 are incorporated in the following methodology and provisions. Costs are determined based upon audited and or desk reviewed cost reports to calculate the new base rate components.

#### REIMBURSEMENT METHODOLOGY FOR PRIVATE NURSING FACILITIES

##### A. General Provisions

1. The bureau has designated a system of prospective payment amounts based on recipient levels of care: Intermediate Care I (IC-I); Intermediate Care II (IC-II); Skilled Nursing (SN); Skilled Nursing/Infectious Disease (SN/ID) and Skilled Nursing/Technology Dependent Care (SN/TDC); Neurological Rehabilitation Treatment Program (NRTP), which includes Rehabilitation Services; and Complex Care Services.

2. Facilities may furnish services to patients of more than one classification of care. Every nursing facility provider must meet the nursing home reform requirements of OBRA 1987.

3. Determination of Limits. Cost limits will be established based on a statistical analysis of industry data to assure that total payments under the plan will not exceed Title XVIII reimbursement. The ceiling limitation on reasonable cost will be set at a level the state determines adequate to reimburse an efficiently operating facility. Incentive for efficient operation will be allowed as a profit opportunity for providers who provide required services at a cost below the industry average.

4. Maximum Rate. The state will make payment at the statewide rate for the patient level of care provided or the provider's customary charge to the public, whichever is lower.

##### B. Cost Determination

###### 1. Definitions

###### a. Consumer Price Indices

*CPI-Administrative and General*—the Consumer Price Index - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Housekeeping/Linen/Laundry*—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Nursing Services*—the Consumer Price Index for All Urban Consumers - South Region (Medical Care Services line) as published by the United States Department of Labor.

*CPI-Other Dietary*—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Plant Operation and Maintenance*—the Consumer Price Index - South Region (All Items line) as published by the United States Department of Labor.

*CPI-Raw Food*—the Consumer Price Index for All Urban Consumers - South Region (Food line) as published by the United States Department of Labor.

*CPI-Recreation*—the Consumer Price Index for All Urban Consumers - South Region (All Items line) as published by the United States Department of Labor.

b. Economic Adjustment Factors. Each of the above economic adjustment factors is computed by dividing the value of the corresponding index for December of the year preceding the rate year by the value of the index one year earlier (December of the second preceding year).

c. Rate Year. The rate year is the one-year period from July 1 through June 30 of the next calendar year during which a particular set of rates is in effect. It corresponds to a state fiscal year.

d. Base Rate. The base rate is the rate calculated in accordance with B.3.b.

e. Base Rate Components. The base rate is the summation of the components shown in Table I. Each base rate component is intended to reimburse for the costs indicated by its name.

2. Table I. Base Rate Components

A	B	C
Preceding Rate Year Base Rate Component	Economic Adjustment Factor	New Base Rate Component
<b>DIRECT RESIDENT CARE COSTS:</b>		
Nursing Services (NSCC)	CPI - Medical Care Services	New NSCC
Raw Food (RFCC)	CPI - Food	New RFCC
Recreational (RCC)	CPI - All Items	New RCC
<b>INDIRECT RESIDENT CARE COSTS:</b>		
Housekeeping/Linen/Laundry (HLLCC)	CPI - All Items	New HLLCC
Other Dietary (ODCC)	CPI - All Items	New ODCC
Plant Operation & Maintenance (POMCC)	CPI - All Items	New POMCC
Administrative & General (AGCC)	CPI - All Items	New AGCC
Building Costs <sup>1</sup> (BCC)	Recompute annually	New BCC
Incentive Factor <sup>2</sup> (IF)	Recompute annually	NEW IF

<sup>1</sup> The base rate is established computing an average fair rental value on nursing home beds as follows:

Step 1. Base Value of a Nursing Home Bed. The base value of a nursing facility bed is determined by the median value of the cost of a nursing home bed, adjusted for Louisiana, as published in the *Building*

*Construction Cost Data* by R.S. Means for the previous rate year and then adjusted for occupancy. The adjustment for Louisiana is computed by multiplying the median value by the simple average of the adjustment factors listed for Louisiana metropolitan areas. This result is then divided by a statewide occupancy factor based on the LTC2 for the third quarter of the preceding calendar year.

Step 2. Rental Value. The base value as computed above is multiplied by 150% of the 30 year Treasury Bill Rate as of December 31, 1993. The result of this computation is then converted to a daily rental value rate.

<sup>2</sup> The Incentive Factor component is computed based on 5% of the sum of the base rate components excluding the Building Cost Component.

3. Base Rate Determination and Percentile Levels. Rate determination is made according to a uniform recipient level of care rate which is adjusted annually from the base rate using the economic indices specified in the plan. In all calculations, the base rate and the base rate components will be rounded to the nearest one cent (two decimal places) and the economic adjustment factors will be rounded to four decimal places.

a. Determination of Inflation Adjustment Factor. The determination of the inflation adjustment factor is based on the Consumer Price Index (CPI) as described in Section B.1.b.

b. Calculation of Base Rate. Separate daily rates will be calculated for each recipient level of care (IC-I, IC-II, and N). The rate for each level of care will be set at an amount which the state determines is reasonable to reimburse equitably in full the allowable cost of providing care in a provider facility that is economically and efficiently operated. The rate for each level of care will be recalculated each year and will be effective for July services. The rate for each level of care shall be calculated by multiplying each specific rate component by the corresponding economic adjustment factor as specified in Table I. The nursing services component of the base rate differs by the level of care as a result of the minimum number of nursing hours required for the level of care as mandated by the Standards for Payment for Nursing Facility Services as follows intermediate care levels one and two 2.35 and skilled nursing 2.6.

c. The following percentiles are used in calculating the base rate:

direct resident care costs	80th
housekeeping/linen/laundry	70th
other indirect resident care costs exclusive of building costs and incentive factor	60th

percentile factor is not applicable to the building costs and incentive component.

d. Base Value of a Nursing Facility Bed. The base value of a nursing facility bed is determined by the median value of the cost of a nursing home bed, adjusted for Louisiana, as published in the *Building Construction Cost Data* R.S. Means for the previous rate year and then adjusted for occupancy. The adjustment for Louisiana is computed by multiplying the median value by the simple average of the adjustment factors listed for Louisiana metropolitan areas. This result is then divided by statewide occupancy

factor based on the LTC2 for the third quarter of the preceding calendar year.

e. Rental Value. The base value as computed above is multiplied by 150 percent of the 30-year Treasury Bill Rate as of December 31, 1993. The result of this computation is then converted to a daily rental value rate.

f. Incentive Factor. The incentive factor component is computed based on 5 percent of the sum of the base rate components excluding the building cost component.

g. Annualization

i. Base Rate Components. After formal adoption of the new rate, the components computed above will become the base rate components used in calculating the next year's new rate, unless they are adjusted as provided in Section B.4 and B.5.

ii. New Base Rate Components. The base rate components are adjusted annually (each rate year) by the economic adjustment factors as listed in Table I. This computation is performed by multiplying the preceding year base rate component (Table I, Column A) multiplied by the applicable economic adjustment factor (Table I, Column B). The product becomes the new base rate component. The building cost component and the return on equity factor are recomputed annually as described in the footnotes to Table I.

4. Interim Adjustment to Rates. If an unanticipated change in conditions occurs which affects the cost of a level of care of at least 50 percent of the enrolled nursing homes providing that level of care by an average of 5 percent or more, the rate may be changed. The Bureau of Health Services Financing will determine whether or not the rates should be changed when requested to do so by 10 percent or more of the enrolled nursing homes, or an organization representing at least 10 percent of the enrolled nursing homes providing the level of care for which the rate change is sought. The burden of proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. In computing the costs, all capital expenditures will be converted to interest and depreciation. The Bureau of Health Services Financing, however, may initiate a rate change without a request to do so. Changes to the rates may be one of two types:

a. temporary adjustments; or

b. base rate adjustments as described below:

i. Temporary Adjustment. Temporary adjustments do not affect the base rate used to calculate new rates.

(a). Changes that will be reflected in the economic indices. Temporary adjustments may be made when changes which will eventually be reflected in the economic Indices occur after the end of the period covered by the index, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

(b). Lump Sum Adjustments. Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay. Such adjustments shall be subject to BHSF review and approval of costs prior to reimbursement. These changes are usually

specific to *Federal Register* changes or "Standards for Payment Changes" which result in a significant one time cost impact on the facility. In the event of an adjustment, the providers will be responsible for submitting to the bureau documentation to support the need for lump sum adjustment and related cost data upon which the bureau can calculate reimbursement.

ii. Base Rate Adjustment. A base rate adjustment will result in a new base rate component or a new base rate component value which will be used to calculate the new rate for the next year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

### C. Filing of Cost Reports

1. Providers of nursing home services under Title XIX are required to file annual cost reports for evaluation for each patient level of care for which services were rendered during the year. A chart of accounts and an accounting system on the accrual basis are used in the evaluation process.

2. The bureau's personnel or its contractual representative will perform desk reviews of the cost reports within six months of the date of submittal. In addition to the desk review, a representative number of the facilities are subject to a full-scope, on-site audit annually.

3. Cost reports will be compared by the Bureau of Health Services Financing to the rates calculated by this methodology at least every three years to insure that the rates remain reasonably related to costs. When indicated by such comparison, base rate component and the overall base rate will be adjusted to reflect cost experience.

a. Initial Reporting. The initial cost report submitted by Title XIX providers of long term care services must be based on the most recent fiscal year end. The report must contain costs for the 12-month fiscal year.

b. Subsequent Reports. Cost reports shall be submitted annually by each provider within 90 days of the close of the facility's normal fiscal year end. Cost reports filed subsequent to interim rate adjustments may be used to validate an interim rate adjustment.

4. Exceptions. Limited exceptions to the report requirement will be considered on an individual facility basis upon written request from the provider to Department of Health and Hospitals, Chief, Health Standards Section. If an exception is allowed, providers must attach a statement describing fully the nature of the exception for which written permission has been requested and granted prior to filing of the cost report. Exceptions which may be allowed with written approval are as follows:

a. For the initial reporting period only, the provider may allocate costs to the various cost centers on a reasonable basis if the required itemized cost breakdown is not available.

b. If the facility has been purchased, leased or has effected major changes in the accounting system as an on-going concern within the past 12 months, a six-month cost report may be filed in lieu of the required 12-month report.

c. If the facility experiences unavoidable difficulties in preparing the cost report by the prescribed due date, an extension may be requested prior to the due date. Requests

for exception must contain full statement of the cause of difficulties which rendered timely preparation of the cost report impossible.

d. If a facility is new, it will not be required to file a cost report for rate setting purposes until one full operating year is completed.

### 5. Sales of Facilities

a. In the event of the sale of a Title XIX facility, the seller is required to submit a cost report from the date of its last fiscal year end to the date of sale.

b. If the purchaser continues the operation of the facility as a provider of Title XIX services, he is required to furnish an initial cost report covering the date of purchase to the end of the facility fiscal year under his ownership. Thereafter, the facility will file a cost report annually on the purchaser's designated fiscal year end.

EXAMPLE: Mr. X purchased facility J from Mr. Q on September 1, 1993. Facility J's fiscal year end, prior to purchase, was 12/31/93. Mr. Q is required to file a cost report for the period 1/1/93 through the period 8/31/93. If Mr. X decides to change facility J's fiscal year end to 6/30/93, his first report will be due for the nine month period ending 6/30/94, and annually thereafter. NOTE: Facilities purchased as on-going concerns are not considered new facilities for cost reporting purposes.

### 6. New Facilities

a. For cost reporting purposes a new facility is defined as a newly constructed facility. A new facility is paid the applicable patient level of care rates. A new facility is not required to file a cost report for rate setting purposes until one full operating year has been completed.

b. A facility purchased as an on-going concern is not considered a new facility for reimbursement rate determination. Cost data shall be submitted as required for the original ownership. Any additional costs, such as increased depreciation, interest, etc., will be reflected in the future year's per diem rates only.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

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

**RULE TITLE: Reimbursement Methodology - Private Nursing  
Facility Services**

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

Implementation of this rule is projected to decrease state expenditures by \$27,552 in SFY 1994-1995 for a six-month period due to implementation of this change by emergency rule on 1/1/95; and will decrease state expenditures by \$4,651,205 for SFY 1995-1996 and by \$3,629,277 for SFY 1996-1997.

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

Implementation of this rule will decrease federal revenue collections by \$73,186 in SFY 1994-1995 and will decrease federal revenue collections by \$12,007,837 for SFY 1995-1996 and by \$8,982,232 for 1996-1997.

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

The providers of private nursing facility services will experience the reimbursement changes shown above for the nursing facility services they provide. Medicaid residents in these facilities are not directly impacted by this proposed rule.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
09#108

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Leave of Absence—Nursing Facility Residents**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing provides coverage under the Medical Assistance Program for nursing facility services. Nursing facility services are mandatory under Title XIX of the Social Security Act; however, states may choose methodology for providing reimbursement for nursing

facility services. The number of reimbursable leave of absence days are limited to 10 days per hospitalization for treatment of an acute condition, and to nine days per year for other leave days. The department is now proposing to reduce payments to nursing facilities by limiting the number of reimbursable leave of absence days. The department has determined it is necessary to lower these reimbursable limits. Beds are reserved for up to five days per hospitalization for treatment of an acute condition and beds are reserved for up to four days per calendar year for other leave days.

Therefore, the following proposed rule reduces payments to nursing facilities by limiting the number of reimbursable leave of absence days.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces payments to nursing facilities by limiting the number of reimbursable leave of absence days as follows.

1. Beds are reserved for up to five days per hospitalization for treatment of an acute condition.

2. Beds are reserved up to four days per calendar year for other leave days.

Absences for 23 hours or less on a consistent basis could jeopardize continual medical certification for the resident.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Tuesday, October 24, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Leave of Absence—Nursing Facility Residents**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for vendor payment for leave of absence days from nursing facilities by approximately \$2,792,000 for SFY 1995-1996; \$2,903,680 for SFY 1996-1997; and \$3,112,574 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for vendor payment for leave of absence days from nursing facilities will decrease by approximately \$7,208,000 for SFY 1995-1996; \$7,496,320 for SFY 1996-1997 and \$7,703,426 for SFY 1997-1998.

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

It is anticipated that the providers of the nursing facility service will experience the combined state and federal expenditure decreases shown above for the provision of these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#105

David W. Hood  
Senior Fiscal Analyst

Calculated State Payment	Copayment
\$10.00 or less	\$0.50
\$10.01 to \$25.00	\$1.00
\$25.01 to \$50.00	\$2.00
\$50.01 or more	\$3.00

The pharmacy provider shall collect a copayment from the Medicaid recipient for each drug dispensed by the provider and covered by Medicaid. The following pharmacy services are exempt from the copayment requirement:

- A. services furnished to individuals under 21 years of age;
- B. services furnished to pregnant women if such services are related to the pregnancy, or to any other medical condition which may complicate the pregnancy;
- C. services furnished to any individual who is an inpatient in a hospital, long term care facility, or other medical institution;
- D. emergency services provided in a hospital, clinic, physician office or other facility equipped to furnish emergency care;
- E. family planning services and supplies.

In accordance with Federal regulations the following provisions apply: 1) the provider may not deny services to any eligible individual on account of the individual's inability to pay the copayment amount. However, this service statement does not apply to an individual who is able to pay, nor does an individual's inability to pay eliminate his or her liability for the copayment. Providers shall not waive the recipient copayment liability. Departmental monitoring and auditing will be conducted to determine provider compliance. Violators of this policy will be subject to a penalty such as suspension from the Medicaid Program.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Friday October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**NOTICE OF INTENT**

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

**Pharmacy Program—Copayment Requirement**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals is implementing a copayment on prescription services. The copayment shall be paid by the recipient and collected by the provider at the time the service is rendered. Medicaid reimbursement to the provider shall be adjusted to reflect the copayment amount for which the recipient is liable. In accordance with 42 CFR 447.15, the provider may not deny services to any eligible individual on account of the individual's inability to pay the copayment amount. Under 42 CFR 447.15, this service statement does not apply to an individual who is able to pay nor does an individual's inability to pay eliminate his or her liability for the copayment. States may choose to include a copayment requirement in the pharmacy program under the Medicaid program.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing imposes a copayment requirement in the Pharmacy Program based on the following payment schedule:

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

**RULE TITLE: Pharmacy Program—Copayment Requirement**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for pharmacy copayment services by approximately \$1,502,290 for SFY 1995-1996; \$1,562,382 for SFY 1996-1997; and \$1,674,782 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for services will decrease by approximately \$3,878,406 for SFY 1995-1996; \$4,033,542 for SFY 1996-1997 and \$4,144,979 for SFY 1997-1998.

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

It is anticipated that the providers of the pharmacy copayment program will experience the combined state and federal expenditure decreases shown above for the provision of these services.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
509#098

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Pharmacy Program—Maximum Allowable Overhead Cost**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing has provided a pharmacists' dispensing fee for the Pharmacy Program in accordance with the methodology approved in the State Plan for the Maximum Allowable Overhead Cost, which includes a \$ .10 provider fee collected on all prescriptions dispensed to Louisiana residents from pharmacies. The maximum allowable overhead cost was determined by updating the base rate through the application of various 1993 indices to appropriate cost categories to assure recognition of costs which must be incurred by efficiently and economically operated providers. The bureau is now proposing to freeze the maximum allowable overhead cost for pharmacists' dispensing fee at the 1994-95 level in order to avoid a budget deficit in the medical assistance programs. So, effective July 1, 1995, the Bureau of Health Services

Financing will begin transitioning to a managed pharmacy system in which an on-line point of sale and prospective drug utilization review system will be implemented. To ensure appropriate reimbursement during this transitional period to a managed system for pharmacy services, the maximum allowable overhead cost shall remain at the level established for state fiscal year 1994-1995.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions applicable to the maximum overhead cost under the Pharmacy Program.

**Maximum Allowable Overhead Cost**

1. For fiscal year 1995-96, the maximum allowable overhead cost will remain for a one-year period at the level established for fiscal year 1994-95. This maximum allowable overhead cost was established by applying the 1993 indices to appropriate cost categories for a one-year period.

2. No inflation indices or any interim adjustments will be applied to the maximum allowable overhead costs for the time period, July 1, 1995 through June 30, 1996.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Friday October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pharmacy Program—Maximum Allowable  
Overhead Cost**

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

It is anticipated that implementation of this proposed rule will not result in decreased expenditures in the Pharmacy Program because the maximum allowable overhead cost for SFY 1996 had not yet been implemented. No increased or decreased expenditures are anticipated for SFY 1997 and 1998 because this rule is being proposed for one year only.

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

It is anticipated that federal revenue collections for the Pharmacy Program will not result in decreased expenditures because the maximum overhead cost for SFY 1996 had not yet been implemented. No increased or decreased federal revenue collections are expected for SFY 1997 and 1998 because this rule is being proposed for one year only.

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

It is anticipated that the providers of the Pharmacy Program will not experience any costs from this proposed rule because the maximum overhead cost for SFY 1996 had not been implemented.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#099

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Professional Service Program—Physician Services**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses professional services according to established rates for Current Procedural Terminology (CPT) codes, locally assigned codes and HCPCS codes. Effective for dates of service July 7, 1995 and after, the bureau is reducing the reimbursement by 10 percent for the following codes:

- CPT codes 10040 - 69979 for surgery
- CPT codes 90700 - 99199 for medicine
- CPT codes 99201 - 99499 for evaluation and management.

Also, fees for the following locally assigned codes and HCPCS codes will be reduced by 10 percent:

- Z9001 through Z9006 - Prenatal labs, prenatal visits, postpartum visit
- Z9916 - Brainstem evoked response screening
- Z9919 through Z9920 - Androscopy with and without Biopsy
- 00099 - Anesthesia for Arteriograms, Cardiac Caths, CT Scans, Angioplasties and MRIs
- Z9918 - Removal of Leaking Breast Implants
- J0170 - Adrenalin Injections

- J7190 - Factor VIII Injections for Hemophilia
- J2910 - Gold Therapy Injections
- J1055 - Depo-Provera C Injections
- L8603 - Collagen Implant

In addition the fees for the following codes will be reduced by 15 percent:

CPT codes:

- 70010 - 79999 Radiology
- 80002 - 89399 Pathology and Laboratory

Locally assigned codes:

- Z0053 - Fructosamine
- Z0054 - Zinc Protoporphin
- Z0055 - Free Erythrocyte Protoporphin

Changes in reimbursement for the neonatal per diem codes 99295, 99296, and 99297 are included in an emergency rule on neonatology services reimbursement.

The fees being paid to anesthesiologists and CRNAs for procedure codes 62279 and 59515 are not included in this rule.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, reduces the reimbursement for procedure codes payable under the Professional Services Program in accordance with the following schedule.

I. The fees for the following CPT procedure codes are reduced by 10 percent:

A. CPT Codes:

- CPT codes 10040 - 69979 for surgery
- CPT codes 90700 - 99199 for medicine and
- CPT codes 99201 - 99499 for evaluation and management.

B. The following locally assigned codes and HCPCS codes:

- Z9001 through Z9006 - Prenatal labs, prenatal visits, postpartum visit
- Z9916 - Brainstem evoked response screening
- Z9919 through Z9920 - Androscopy with and without

Biopsy

- 00099 - Anesthesia for Arteriogram, Cardiac Caths, CT Scans, Angioplasties and MRIs

- Z9918 - Removal of Leaking Breast Implants
- J0170 - Adrenalin Injections
- J7190 - Factor VIII Injections for Hemophilia
- J2910 - Gold Therapy Injections
- J1055 - Depo-Provera C Injections
- L8603 - Collagen Implant

II. The fees for the following procedure codes are reduced by 15 percent:

A. CPT Codes:

- 70010 - 79999 - Radiology
- 80002 - 89399 - Pathology and Laboratory

B. The following locally assigned and HCPCS codes:

- Z0053 - Fructosamine
- Z0054 - Zinc Protoporphin
- Z0055 - Free Erythrocyte Protoporphin

III. The reimbursement rates payable to anesthesiologists and CRNAs for procedure codes 62279 and 59515 and for the



neonatal per diem codes 99295, 99296 and 99297 are not subject to this rule.

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

A public hearing will be held on this matter at 9 a.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Professional Services Program  
Physician Services**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for physician services by approximately \$6,093,287 for SFY 1995-1996; \$6,337,018 for SFY 1996-1997; and \$6,792,911 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for physician services will decrease by approximately \$15,730,806 for SFY 1995-96; \$16,360,039 for SFY 1996-97 and \$16,812,028 for SFY 1997-1998.

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

It is anticipated that the providers of the physician program will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
509#122

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Rehabilitation Clinic Services**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Medicaid Program provides coverage and reimbursement for services delivered by rehabilitation clinics which are facilities that are not part of a hospital but are organized to provide a variety of outpatient rehabilitative services including physical, occupational, speech, hearing, and language therapies. States may choose to include or exclude clinic services under their medical assistance programs as these services are optional under Title XIX of the Social Security Act. The department is now proposing to reduce the reimbursement to these clinics for physical, occupational, speech, hearing and language therapies.

The rehabilitative services physical, occupational, speech, hearing and language are still available and recipients may access these services through the hospital, physician, home health, rural health clinic and federally qualified health center programs.

**Proposed Rule**

The Department of Health and Hospitals, Bureau of Health Services Financing, reduces the reimbursement by 10 percent to rehabilitation clinics which are facilities that are not part of a hospital but are organized to provide a variety of outpatient rehabilitative services including physical, occupational, speech, hearing, and language therapies.

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

responding to inquiries regarding this emergency rule. A public hearing will be held on this matter at 9 a.m., Friday, October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Rehabilitation Clinic Program

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for rehabilitation clinic services by approximately \$151,801 for SFY 1995-1996; \$183,280 for SFY 1996-1997; and \$169,230 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for rehabilitation clinic services will decrease by approximately \$391,898 for SFY 1995-1996; \$473,167 for SFY 1996-1997 and \$418,835 for SFY 1997-1998.

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

It is anticipated that the providers of the rehabilitation clinic program will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#095

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

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

Rural Health Clinic Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to

the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law." This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing reimburses rural health clinic visits and physician visits under the Medicaid Program. Physician visits are limited to 12 medically necessary visits per year for each eligible recipient who is 21 years of age or older. Recipients under the age of 21 are not subjected to program limitations, other than the limitation of medical necessity. The following services have been counted as one of the 12 allowable visits per year for recipients 21 years of age or older:

A. physician office visit including visits to optometrists;

B. physician home visit;

C. consultation from another physician when such consultation is essential for the treatment of the recipient's illness;

D. physician visit in an outpatient hospital setting including emergency room visits due to accidental injury or sudden and serious illness;

E. physician visit in a nursing home: the physician will sign the recipient's chart at the facility on the day of the visit; and

F. family planning services for the following:

1. initial visit to include a physical examination with pelvic, pap smear and counseling;

2. pap smear; and

3. insertion and/or removal of an intravenous device.

Rural health clinic visits have not been included in the 12 physician visits allowable per year under the Medicaid Program for recipients 21 or older. The department now proposes to include rural health clinic visits under the 12 allowable visits for each recipient 21 years of age or older. This action is being taken to avoid a budget deficit in the medical assistance programs.

### Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing includes each rural health clinic visit, i.e., encounter, as one of the 12 physician outpatient visits allowable per year for Medicaid eligibles who are 21 years of age or older.

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

A public hearing will be held on this matter at 9 a.m., Monday, October 30, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Rural Health Clinic Services**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for rural health services by approximately \$69,800 for SFY 1995-1996; \$72,592 for SFY 1996-1997; and \$77,699 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for rural health services will decrease by approximately \$180,200 for SFY 1995-96; \$187,408 for SFY 1996-97 and \$192,301 for SFY 1997-1998.

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

It is anticipated that the providers of the rural health service will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9509#120

David W. Hood  
Senior Fiscal Analyst

Billing codes for these services are X0146, X0147, X0148 and X0149 respectively.

**Proposed Rule**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reimburses substance abuse clinics for only one procedure per day per recipient. Occupational therapy, recreational therapy, music therapy, and art therapy are not reimbursable services under the Medicaid Program.

Interested persons may submit written comments to: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 1 p.m., Friday October 27, 1995, in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day of the public hearing.

Rose V. Forrest  
Secretary

**NOTICE OF INTENT**

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

**Substance Abuse Clinics**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program and as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This proposed rule is in accordance with the provision of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing reimburses substance abuse clinics for each service performed for a recipient. The bureau is proposing to revise the program to allow reimbursement for a maximum of one service per day per recipient. Additionally, there will be no reimbursement for the following services: occupational therapy, recreational therapy, music therapy or art therapy.

Thomas D. Collins  
Director  
9509#101

David W. Hood  
Senior Fiscal Analyst

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Substance Abuse Clinics**

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

It is anticipated that implementation of this proposed rule will result in decreased expenditures for substance abuse services by approximately \$55,840 for SFY 1995-1996; \$58,074 for SFY 1996-1997; and \$62,251 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for rehabilitation clinic services will decrease by approximately \$144,160 for SFY 1995-1996; \$149,926 for SFY 1996-1997 and \$154,069 for SFY 1997-1998.

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

It is anticipated that the providers of the rehabilitation clinic program will experience the combined state and federal expenditure decreases shown above for the provision of these services.

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

There is no known effect on competition and employment.

## NOTICE OF INTENT

### Department of Insurance Commissioner of Insurance

#### Regulation 51—Individual Health Insurance Rating

In accordance with the provisions of R.S. 49:950 et seq. of the Administrative Procedure Act, the Commissioner of Insurance proposes amendments to Regulation 51 in order to comply with changes made to R.S. 22:228.6(B) set forth in Act 1173 of the 1995 Regular Legislative Session.

**Section 1. - Section 4. ...**

#### **Section 5. Restrictions on Premium Rates**

A. ...

B. R.S. 22:228.6.b(2)(e), requires, in substance, that the premium rates charges during a rating period to individuals may not vary from the index rate by more than 20 percent following January 1, 1994. This requirement shall be met for each individual if the ratio of the premium charged the individual to that calculated from the rate manual is between 1 and 1.5 for rating periods following January 1, 1994.

C. - C.1. ...

C.2. For rating periods following January 1, 1994, the maximum renewal premium is 1.5 times the manual rate in C.1.

C. 3. ...

#### **Section 6. ...**

Interested parties may submit comments on the regulation until 4:30 p.m., October 27, 1995 to: George Renaudin, II, Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214.

James H. "Jim" Brown  
Commissioner

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Regulation 51 Individual Health Insurance Rating

#### 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 amendment to Regulation 51. The regulation does not impose any new duties on the Department of Insurance.

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

Adoption of this amendment to Regulation 51 will not have any effect on revenue collections by the state or local governmental units. There are no fines, fees or other revenue-generating activities imposed.

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

There is not sufficient data available at this time to determine if there could be any costs and/or economic benefits to the health care insurers or insureds as a result of this amendment to the regulation.

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

It is not anticipated that adoption of this amendment to Regulation 51 would have any effect on employment or competition.

Brenda St. Romain  
Assistant Commissioner  
Management and Finance  
9509#085

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Insurance Commissioner of Insurance

#### Regulation 52—Small Group Health Insurance Rating

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Commissioner of Insurance proposes amendments to Regulation 52 in order to comply with changes made to R.S. 22:228.6(B) set forth in Act 1173 of the 1995 Regular Legislative Session.

**Section 1. - Section 4. ...**

#### **Section 5. Restrictions on Premium Rates**

A. ...

B. R.S. 22:228.2.A(2) and R.S. 22:228.6.B(2)(e), Louisiana Statutes, require, in substance, that within a class the premium rates charged to small employers during a rating period may not vary from the index rate by more than 20 percent following January 1, 1994. This requirement shall be met for each small employer if the ratio of the premium charged the employer to that calculated from the rate manual is between 1 and 1.67 for rating periods from September 30, 1992 through December 31, 1993 and between 1 and 1.50 for rating periods following January 1, 1994.

C.1 - 3.i. ...

ii. The sum of 1.00 plus the highest ratio calculated from C.3.i divided by two shall be used as the conversion factor in C.3 above. For the calendar year 1993, if the highest ratio calculated in C.3.i above is greater than 1.67, then 1.67 shall be used as the highest ratio. This conversion factor should be calculated for each class of business. For calendar year 1994 and thereafter, 1.5 shall be used above.

C.4. - 5. ...

D. - E.5.i. ...

ii. For rating periods through December 31, 1993, if E.5.i exceeds 1.67, then 1.67 multiplied by the manual rate in E.1 is the maximum renewal premium, not the renewal premium in E. For rating periods after December 31, 1993, 1.50 should be substituted for 1.67.

#### **Section 6. ...**

Interested parties may submit comments on the regulation until 4:30 p.m., October 27, 1995 to George Renaudin, II, Louisiana Department of Insurance, Box 94214, Baton Rouge, LA 70804-9214.

James H. "Jim" Brown  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Regulation 52  
Small Group Health Insurance Rating**

**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 amendment to Regulation 52. The regulation does not impose any new duties on the Department of Insurance.

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

Adoption of this amendment to Regulation 52 will not have any effect on revenue collections by the state or local governmental units. There are no fines, fees or other revenue-generating activities imposed.

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

There is not sufficient data available at this time to determine if there could be any costs and/or economic benefits to the health care insurers or insureds as a result of this amendment to the regulation.

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

It is not anticipated that adoption of this amendment to Regulation 52 would have any effect on employment or competition.

Brenda St. Romain  
Assistant Commissioner  
Management and Finance  
9509#086

David W. Hood  
Senior Fiscal Analyst

These proposed regulations are available for inspection at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70804, and at the Department of Labor, 1001 North Twenty-third Street, Third Floor Annex, Baton Rouge, LA 70804-9094.

Gayle F. Truly  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Community Services Block Grant**

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

None, the proposed rules are neutral with regard to this question.

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

None, the proposed are neutral with regard to this question.

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

None, the proposed rules are neutral with regard to this question.

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

There is no estimated effect on competition and employment because of these rule changes.

Gayle F. Truly  
Secretary  
9509#008

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Labor  
Office of Labor**

**Community Services Block Grant (CSBG)  
(LAC 40:XVII.Chapters 1-49)**

Under the authority of R.S. 23:1 and R.S. 23:66, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Labor, Office of Labor, intends to amend rules relative to the Community Services Block Grant Program, LAC 40: XVII, Chapters 1-49.

These proposed rules are being amended to clarify changes to and to provide new guidance in accordance with the Community Services Block Grant amendments of 1994 found at 42 USC 9901.

A public hearing will be held October 30, 1995 at 9:30 a.m. in the Third Floor Conference Room of the Department of Labor Annex Building. Interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than October 26, 1995 at 4 p.m. to Ivan Chatelain, Box 94094, Baton Rouge, LA 70804-9094.

**NOTICE OF INTENT**

**Department of Labor  
Plumbing Board**

**Licensure, Renewals, Fees  
(LAC 46:LV.101, 301-310 and 901)**

In accordance with the Administrative Procedure Act, notice is hereby given that the Louisiana State Plumbing Board intends to amend its rules to comply with and implement provisions of Act 824 of the 1995 Regular Session of the Louisiana Legislature, which relates to the examination and licensing of medical gas piping installers and endorsements of plumbing licenses for the work of water supply protection specialists. The board is empowered to adopt such regulations by R.S. 37:1366(D), 1368(G) and 1368(H). Existing fees in LAC 46:LV.309.A and B relative to journeyman and master plumbers are being repromulgated in a new Section 310, which also implements new fees in Subsections C and D of this new Section relative to medical gas piping installers and water supply protection specialists. Plumbing Board rules will be restated and/or amended as follows:

Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS

Part LV. Plumbers

Chapter 1. Introductory Information

§101. Definitions

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

A. - G. ...

H. *Water Supply Protection Specialist* as used in R.S. 37:1366(H), 1367(G) and 1368(H)—a master plumber or journeyman plumber licensed by this board, who has been issued an endorsement to his master or journeyman plumber license by this board permitting him to install, repair and maintain backflow prevention devices between the public's or an individual consumer's potable and other water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance other than the intended potable water with which the system is supplied.

I. *Cross-Connection*—any physical link in a public or a consumer's potable water supply system that allows backflows or any other source of contamination or pollution.

J. *Backflow*—the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source.

K. *Backflow Prevention Device*—an assembly that has been investigated and approved by the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California, University Park, and, if applicable, by the Louisiana Department of Health and Hospitals.

L. *Medical Gas Piping Installer*—a natural person who possesses the necessary qualifications and knowledge to install, repair and maintain medical gas piping installations and is licensed as such by the board.

M. *Medical Gas Piping Installation*—the work or business of installing in buildings and premises piping used solely to transport gases for medical purposes. Generally, it shall refer to a pipe distribution system characterized by a central supply (including bulk systems, manifold devices or medical air compressors) with control equipment and piping extending to points in a facility where nonflammable gases are required or utilized, with suitable outlet valves at each use point.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by Department of Employment and Training, Plumbing Board, LR 17:48 (January 1991), amended by the Department of Labor, Plumbing Board, LR 21:

Chapter 3. Licenses

§301. Licenses Required

A. - K. ...

L. Apprentices may engage in the work of medical gas piping installation only when they are under the direct, constant on-the-job supervision of a licensed medical gas piping installer. Direct, constant on-the-job supervision means

that a licensed medical gas piping installer will supervise no more than one apprentice on only one job at a time. No apprentice shall be permitted to engage in brazing procedures or brazing performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by the Department of Employment and Training, LR 17:49 (January 1991), amended LR 19:897 (July 1993), amended by the Department of Labor, Plumbing Board, LR 19: 1593 (December 1993), LR 21:

§303. Application for License

A. - C. ...

D. An application for medical gas piping installer shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he has completed a course of training described in §304.B of these regulations by an organization certified by the board pursuant to R.S. 37:1368(G). Additionally, the applicant must present proof of maintenance of performance qualification as a brazer in accordance with §304.J of these regulations. The applicant must furnish whatever other information relevant to his experience that is requested in the application form or specially requested by the board.

E. An application for an endorsement to a master or journeyman plumber license shall be completed and sworn to before a notary public by the applicant. The applicant must submit proof that he is licensed by the board at the time of application as a master or journeyman plumber. The applicant must submit proof that he has completed a course of training described in §309.B of these regulations. He must furnish whatever other information relevant to his experience that is requested in the application form or specially requested by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by the Department of Employment and Training, Plumbing Board, LR 17:50 (January 1991), amended by Department of Labor, Plumbing Board, LR 21:

§304. Medical Gas Piping Installer License

A. No natural person shall engage in the work or business of medical gas piping installation unless he possesses a license or renewal thereof issued by this board. The board shall issue a medical gas piping installer license to any person who qualifies under the board's regulations and who desires to engage in the work or business of a medical gas piping installer if he passes a written and manual examination given by the board for this purpose and pays the fees established by the board. No person shall qualify for examination as a medical gas piping installer unless he completes a course of training provided by an organization recognized by the board pursuant to §304.B.

B. As authorized by R.S. 37:1368(G), the board shall recognize and certify certain programs of education and training of medical gas piping installation offered by private or public organizations or institutions. A natural person's satisfactory completion of any such program shall qualify him for admission to an examination offered under §304.A of these

regulations. Any such organization must satisfy the board that its program or programs meets the following criteria:

1. The program is conducted at a training facility open to those members of the public that provide proof of five years of training or experience in any aspect of the piping industry.

2. The program requires 32 hours of medical gas piping installation training that meets criteria prescribed by the board and is included in the National Fire Protection Association (NFPA) *99C Gas and Vacuum Systems*, latest edition. Program testing must cover the following areas:

- a. the history of medical gas piping;
- b. application of NFPA 99C to medical gas piping;
- c. industry terminology, definitions, and vocabulary;
- d. performance criteria and objectives;
- e. medical gas hazards;
- f. basic components of medical gas systems;
- g. storage and manifold requirements;
- h. requirement for gas supply systems;
- i. bulk systems;
- j. medical air compressors;
- k. color coding and labeling requirements;
- l. scope of piping;
- m. valves;
- n. medical gas rail;
- o. gas piping;
- p. brazing procedures and installation requirements;
- q. alarm requirements.

3. The program must employ or utilize certified welding inspectors (CWI) to witness brazing exercises and the certification of brazers in accordance with American Welding Society (AWS), *Standard for Brazing Procedures and Performance Qualification*.

4. The program must be conducted at a facility capable of housing brazing qualification procedures administered to trainees in accordance with either Section IX, "Welding and Brazing Qualifications" of the *ASME Boiler and Pressure Vessel Code* or AWS B2.2, *Standard for Brazing Procedure and Performance Qualification*, as modified by NFPA 99C Gas and Vacuum Systems, latest edition. Such brazing training must be performed on copper tubing and conducted in a fashion to qualify a trainee on all ranges from quarter-inch through four-inch nominal type "L" copper tubing.

5. The program must employ or utilize instructors who are certified as medical gas installers by a governmental agency having jurisdiction over medical gas piping. In the absence of a governmental agency exercising such jurisdiction, the board will recognize the role of insurance inspection departments or property owners who have assumed the role of inspecting and approving medical gas piping installation and have exercised such authority with respect to work performed by any such individual providing instructional services to others. Instructors must have completed a 40-hour course on instructional training in the field of medical gas piping installation by an organization certified pursuant to R.S. 37:1368(G) or similar organization recognized by public or private agencies having jurisdiction or authority with respect to medical gas piping installation. Instructors must also possess proof of completion of a minimum of eight hours of

annual continuing education in the field of medical gas piping installation.

C. To be eligible for board certification pursuant to R.S. 37:1368(G), an interested organization providing medical gas piping installation training and education must complete a written application on a form or forms supplied by the board. The board shall be entitled to receive timely information on the program or programs administered by such organization and background of instructors upon request at any time. The board, acting through its representatives, may also inspect the facility and observe the actual training and education programs used or offered by such organizations. Failure to cooperate with the board and its representatives may be grounds for denial or withdrawal of board certification of any such organization. The board may investigate complaints concerning such programs. Adverse administrative action affecting an organization's application for certification or its continued status as an organization certified by the board pursuant to R.S. 37:1368(G) will be subject to the Administrative Procedure Act.

D. An applicant for a medical gas piping installer license must attach to his application a money order or check for the appropriate fee established in §310 of these regulations.

E. Regular quarterly examinations for medical gas piping installer may be held in conjunction with examinations for journeyman or master plumber license applications, or on such days specially set by the board. Interested persons shall be notified of the examination schedule.

F. A medical gas piping installer license application must be submitted to the New Orleans office of the board not less than 30 days before any scheduled examination. Failure to report for the examination will result in forfeiture of the applicant's fee. This forfeiture may be reversed by the board upon a showing of good cause by the applicant explaining his failure to attend the scheduled examination.

G. The chairman of the board shall appoint an examiner or examiners to conduct medical gas piping installer license examinations. An examiner may be a representative of a private or public professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board.

H. The board may accept, in lieu of an examination directly administered by the board to any applicant, the verifiable results of an examination administered between June 1, 1992 and December 31, 1996 by an organization certified pursuant to R.S. 37:1368(G), as evidence of successful completion of the examination referred to in R.S. 37:1368(G). Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas described in §304.B.4 of the regulations.

I. Any person possessing a restricted master plumber license, who is also licensed by the board as a medical gas piping installer, shall not be restricted geographically with respect to his work or business as a medical gas piping installer. However, the restrictions applicable to his restricted

master plumber license shall remain in effect.

J. A medical gas piping installer shall, as a condition of licensing under these regulations, maintain his brazer performance qualification in accordance with NFPA 99C *Gas and Vacuum Systems*, latest edition.

K. Any person, who at any time is cited by the board for working as a medical gas piping installer without possessing the necessary license issued by the board, shall be subject to a special enforcement fee as a precondition to any subsequent examination or licensing of any nature. This fee shall be in addition to the regular fees assessed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(G).

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 21:

### §307. Renewals

A. All plumbing and medical gas piping installer licenses, as well as water supply protection endorsements, expire December 31 of each year. Applications for renewal will be mailed out by the end of October. The issuance of renewals will commence November 1 of each year. The term "renewal application" as used in this §307 shall refer to all licenses and endorsements issued by the board.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated LR 2:419 (December 1976); amended LR 7:588 (November 1981); amended by Department of Employment and Training, Plumbing Board, LR 17:53 (January 1991), LR 18:30 (January 1992); amended by the Department of Labor, Plumbing Board, LR 21:

### §309. Water Supply Protection Specialist Endorsement

A. No natural person shall engage in the work of a water supply protection specialist unless he possesses an endorsement to either a master plumber license or a journeyman plumber license or renewals thereof issued by the board. The board shall issue such an endorsement to either form of license to any person who qualifies under the board's regulations and who desires to engage in doing the work of a water supply protection specialist, if he passes an examination given by the board and pays the fees established by the board.

B. A person possessing a restricted master plumber license, who also possesses a water supply protection specialist endorsement to that license issued by the board, shall not be restricted geographically with respect to his work or business as a water supply protection specialist. However, the restrictions applicable to his restricted master plumber license shall remain in effect.

C. As authorized by R.S. 37:1368(H), the board shall recognize and certify certain programs of education and training of water supply protection offered by private or public organizations or institutions. A journeyman or master plumber licensed by this board who successfully completes any such program shall qualify for admission to an examination offered under §309.A of these regulations. Any such organization must satisfy the board that its program or programs includes training and testing in the following areas:

1. the history of plumbing as it pertains to backflow and

cross-connections and the public health;

2. knowledge of backflow and cross-connection incidents;

3. regulations, statutes, ordinances and codes (federal, state and local);

4. industry terminology, definitions and vocabulary;

5. purpose of a cross-connection control program;

6. knowledge of backflow, backpressure, back-siphonage;

7. the identification of cross-connections (direct and indirect);

8. the identification and description of backflow preventers and devices utilized for the prevention of cross-connections;

9. knowledge of the principles and operation of test gauges;

10. knowledge of proper testing of backflow preventers;

11. trouble shooting backflow preventers;

12. responsibilities of the general tester, water purveyor, building safety departments and maintenance and repair personnel;

13. documentation (to include maintenance and repair);

14. safety (Applicable rules and regulations as specified by OSHA); and

15. maintenance and repair of backflow prevention assemblies.

D. Courses of instruction defined in §309.C must be provided by a person or persons possessing a current American Society of Sanitary Engineers (ASSE) General Tester Certificate to the guidelines of the ASSE Series 5000/5010 Professional Qualifications Standard or its equivalent; a minimum of five years related experience in the plumbing, pipefitting, or related fields; proof of annual participation in at least eight hours of update and training sessions in the backflow/cross-connection field; approved by the ASSE or its equivalent; and trade related teaching experience or teaching experience for instructor qualifications.

E. To be eligible for board certification pursuant to R.S. 37:1368(H), an interested organization providing water supply protection specialist training and education must complete a written application on a form or forms supplied by the board. The board shall be entitled to receive timely information on the program or programs administered by such organization and background of instructors upon request at any time. The board, acting through its representatives, may also inspect the facility and observe the actual training and education programs used and offered by such organization. Failure to cooperate with the board and its representatives may be grounds for denial or withdrawal of board certification of any such organization. The board may investigate complaints concerning such programs. Adverse administrative action affecting an organization's application for certification or its continued status as an organization certified by the board pursuant to R.S. 37:1368(H) will be subject to the Administrative Procedure Act.

F. The board may accept, in lieu of an examination directly administered by the board to any applicant, the verifiable



results of an examination administered by an organization certified pursuant to R.S. 37:1368(H) between June 1, 1992 and December 31, 1996, as evidence of successful completion of the examination referred to in R.S. 37:1368(H). Any papers from such examinations must be available for inspection and the board may require notarized affidavits from the applicant and the administering organization representative attesting to the accuracy of the examination results and the scope of any such examination, which must minimally include the subject areas described in §309.C of these regulations.

G. An applicant for a water supply protection specialist endorsement must attach to his application a money order or check for the appropriate fee established in §310 of these regulations.

H. Regular quarterly examinations for water supply protection specialist endorsements may be held in conjunction with examinations for journeyman or master plumber license applications, or on such days specially set by the board. Interested persons shall be notified of the examination schedule.

I. A water supply protection specialist endorsement application must be submitted to the New Orleans office of the board not less than 30 days before any scheduled examination.

J. The chairman of the board shall appoint an examiner or examiners to conduct water supply protection specialist endorsement examinations. An examiner may be a representative of a private or public professional service provider qualified to administer a standardized, nationally recognized test duly adopted by the board.

K. Any person, who at any time is cited by the board for working as a water supply protection specialist without possessing an endorsement to that effect, shall be subject to a special enforcement fee as a precondition to any subsequent examination or licensing of any nature. This fee shall be in addition to the regular fees assessed by the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1368(H).

**HISTORICAL NOTE:** Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended LR 7:588 November 1981), amended LR 15:1089 (December 1986) amended by the Department of Employment and Training, Plumbing Board, LR 16: 1088 (January 1990), amended LR 17:53 (January 1991), amended by the Department of Labor, Plumbing Board, LR 19:898 July 1993), LR 19:1594 (December 1993), LR 21:

### §310. Fees

A. The fees and charges of the board relative to journeyman plumbers shall be as follows:

1. Special examinations	\$ 500
2. Examinations	\$ 75
3. Illiterate examinations (This fee's actual cost not to exceed \$100)	\$ 100
4. Initial license fee (This fee to be paid after applicant has successfully passed the exam, in order to receive his first license)	\$ 30
5. Renewal fee	\$ 30
6. Revival fee If renewed after March 31	\$ 10 \$ 20
7. Temporary permits	\$ 50
8. Administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)	50% of Exam Fee
9. Fee for N.S.F. or returned check	\$ 20
10. Special enforcement fee imposed under §305.H	\$ 500

B. The fees and charges of the board relative to master plumbers, restricted master plumbers and inactive master plumbers shall be as follows:

1. Special examinations	\$ 500
2. Examinations	\$ 100
3. Initial license fee	\$ 180
4. Renewal fee	\$ 180
5. Revival fee If renewed after March 31	\$ 60 \$ 120
6. Administrative charges for processing application (to be retained by the board should applicant withdraw his application before taking the examination)	50% of Exam Fee
7. Fee for N.S.F. or returned check	\$ 20
8. Special enforcement fee imposed under §306.G	\$ 500
9. Inactive master plumber fee	\$ 30
10. Fee for conversion of inactive master plumber license to active master plumber	\$ 150
11. Employing entity redesignation fee	\$ 150
12. Special daily enforcement fee imposed under §301.K	\$10/day, not to exceed \$500 in the aggregate
13. Special daily enforcement fee imposed under §308.H	\$10/day, not to exceed \$500 in the aggregate

C. The fees and charges of the board relative to medical gas piping installers shall be as follows:

1. Special examinations	\$ 500
2. Examination	\$ 95
3. Initial License Fee (this fee to be paid after applicant has successfully passed the exam)	\$ 30
4. Renewal fee	\$ 30
5. Revival fee If renewed after March 31	\$ 10 \$ 20
6. Administrative charges for processing application (to be retained by the board should an applicant withdraw his application before taking the examination)	50% of Exam Fee
7. Fee for N.S.F. or returned check	\$ 20
8. Special enforcement fee imposed under §304.K	\$ 500

D. The fees and charges of the board relative to water supply protection specialists endorsements shall be as follows:

1. Special examinations	\$ 500
2. Examination	\$ 50
3. Initial endorsement fee (this fee to be paid after applicant has successfully passed the exam)	\$ 10
4. Renewal fee	\$ 10
5. Revival fee If renewed after March 31	\$ 10 \$ 20
6. Administrative charges for processing application (to be retained by the board should an applicant withdraw his application before taking the examination)	50% of Exam Fee
7. Fee for N.S.F. or returned check	\$ 20
8. Special enforcement fee imposed under §309.K	\$ 500

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D) and R.S. 37:1371.

HISTORICAL NOTE: Promulgated by the Department of Labor, Plumbing Board, LR 21:

### Chapter 9. Revocation and Related Administration Proceedings

#### §901. Revocation, Suspension and Probation Procedures

A. All adjudication proceedings initiated pursuant to R.S. 37:1378 and conducted by the board shall be in accordance with the Administrative Procedure Act, R.S. 49:955 et seq. The term "licensee" as used in this Section, shall refer, where applicable, to the holder of a journeyman plumber, restricted journeyman plumber, master plumber, restricted master plumber, inactive master plumber license, medical gas installer license, and holder of a water supply protection specialist endorsement.

B. - K.3. ...

a. A license or license endorsement to practice plumbing, engage in the work of a water supply protection specialist and/or medical gas piping installer may be withheld by the board as a result of the findings of fact presented in a hearing. The duration of a suspension may be for a definite or indefinite period of time. A licensee or endorsement holder whose license or endorsement is suspended may not practice plumbing, the work of a water supply protection specialist and/or medical gas installer in the state of Louisiana during the designated period of suspension.

b. - c. ...

L. Revocation. A license or endorsement to practice plumbing, engage in the work of a water supply protection specialist and/or medical gas piping installer may be withdrawn by the board for any reason or ground permitted by R.S. 37:1378 or other law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1366(D).

HISTORICAL NOTE: Adopted by the Department of Labor, Plumbing Board, 1968, promulgated as amended by the Department of Employment and Training, Plumbing Board, LR 17:55 (January 1991), amended by Department of Labor, Plumbing Board, LR 21:

All currently stated rules of the board unless amended herein, shall remain in full force and effect.

Any interested person may submit written comments regarding the contents of this proposed rule to Don Traylor, Executive Director, 603 Europe Street, Baton Rouge, LA 70802. All comments must be received no later than 5 p.m., October 16, 1995.

Don Traylor  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensure, Renewals, Fees

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The board estimates \$15,000 in initial implementation costs. The proposed regulations authorize the board to recognize the results of privately administered skills examinations for licensing of affected persons. This will result in initial savings of \$6,750 in examination costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The board anticipates the collection of \$15,000 (FY 95-96), \$23,250 (FY 96-97) and \$26,500 (FY 97-98) in licensing and examination fees. The board is empowered to collect such fees to cover the cost of its licensing.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The fees collected and disclosed in Paragraph II above will be derived from persons seeking licensing as water supply

protection specialists and/or medical gas piping installers pursuant to Act 824 of the 1995 Regular Session.

V. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The implementation of the examination and licensing of water supply protection specialists and medical gas piping installers will enhance competition, as it will provide statewide regulation of an important aspect of the plumbing industry.

Don Traylor  
Executive Director  
509#070

John R. Rombach  
Legislative Fiscal Officer

## NOTICE OF INTENT

### Department of Natural Resources Office of the Secretary

Oyster Lease Damage Evaluation Board  
Administration (LAC 43:I.Chapters 37-41)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Natural Resources, Office of the Secretary proposes the following rule regarding Oyster Lease Damage Evaluation Board law.

#### Title 43

### NATURAL RESOURCES

#### Part I. Office of the Secretary

#### Subpart 3. Administration of the

#### Oyster Lease Damage Evaluation Board

#### Chapter 37. Definitions

#### §3701. Definitions

As used in the promulgation of these rules and regulations, unless the context requires otherwise, the terms set forth herein shall have the following meanings:

*Biological Test Data*—surveys of oyster beds and grounds by a certified biologist to determine the quality, condition, and value of oyster beds and grounds.

*Biological Surveyor*—the certified biologist who performs and supervises the biological test data surveys.

*Board*—the Oyster Lease Damage Evaluation Board.

*Leaseholder*—an owner of an oyster lease granted by the Department of Wildlife and Fisheries.

*Department*—the Department of Natural Resources.

*Mineral Activity*—exploration (such as, but not limited to seismic operations), production, transportation (of equipment or product), and any other activity associated with the production of oil and gas.

*Owner*—an owner or operator of a mineral activity.

*Secretary*—the secretary of the Department of Natural Resources, or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

## Chapter 39. Administration

### §3901. Oyster Lease Damage Evaluation Board; Membership

A. The Oyster Lease Damage Evaluation Board shall be established according to law to arbitrate disputes on damages caused to private oyster leases due to oil and gas activities.

B. The board shall consist of the secretary of the Department of Natural Resources, the assistant secretary of the office of conservation, a biologist from the office of fisheries in the Department of Wildlife and Fisheries, and a member of the Louisiana Oyster Task Force.

C. The representative from the office of fisheries, the representative from the Oyster Task Force, and the assistant secretary of the office of conservation shall review the biological surveys of oyster leases and consult with the secretary who shall make the final determination of damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### §3903. Powers and Duties of the Secretary

A. The secretary shall be responsible for the daily operations of the board which shall be performed by the staff under the supervision, direction, and policies as established by the secretary.

B. The secretary shall set the schedule for all meetings of the board and shall provide tentative agendas which shall be mailed or otherwise made available to each member and all interested parties at least six days prior to each meeting.

C. The secretary may call emergency meetings as warranted to expedite the business of the board by providing at least 72 hours notice to each member and all interested parties.

D. After consulting with the designee of the Department of Wildlife and Fisheries, the Louisiana Oyster Task Force, and the assistant secretary of the Office of Conservation, the secretary shall render all final decisions on the evaluation of damages to an oyster lease due to the proposed mineral activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### §3905. Powers and Duties of the Members of the Board

The designee of the Department of Wildlife and Fisheries, the Louisiana Oyster Task Force, and the assistant secretary of the Office of Conservation shall attend all meetings as called by the secretary and shall review biological survey and damage evaluation reports, make inquiries as to the proposed operations affecting an oyster lease, discuss the scope of the evaluation, and consult with the secretary to assist in the final determination of damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### §3907. Meetings of the Board

The board shall meet once every month on the second Wednesday at 2 p.m., or as needed, to be called by the

secretary of the Department of Natural Resources at his discretion.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.10 et seq.

**HISTORICAL NCTE:** Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### **§3909. Business of the Board**

The board shall meet to hold hearings on damage evaluations, to render decisions on final damages, to arbitrate settlement agreements, to entertain motions for rehearing, and for any other purpose which involves determination of damages as provided by law. All hearings shall be made on the record.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.10 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### **§3911. Operation of the Board**

The daily operations of the board shall be handled by the staff, under the direction and supervision of the secretary, for the purpose of receiving applications, receiving and preparing biological surveys for the boards review, scheduling meetings, notifying parties of hearings and any other administrative business.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.10 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### **§3913. Administrative Fees**

A. Every individual, corporation, or other entity filing an application for review with the board shall submit a fee of \$500 with the application.

B. Anyone filing a motion for rehearing shall submit a fee of \$300 with the motion to cover the cost of the hearing and the taking of the record thereof.

C. In the event of an appeal to the district court the appellant shall pay the cost of transcribing the record to be transmitted to the court.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.10 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

## **Chapter 41. Damage Evaluation Process**

### **§4101. Prerequisite to Filing Application**

A. Before an owner files an application for review to the board he shall make a reasonable effort to negotiate for a release of damages from the leaseholder under the following conditions:

1. The owner shall make a written request mailed to the address of record recorded with the Department of Wildlife and Fisheries, setting forth the proposed mineral activity, asking for a release to enter the oyster lease and for an offer from the leaseholder to settle damages which may be incurred by the leasehold due to the proposed mineral activity.

2. The leaseholder shall have 15 days from receipt of the written request to respond in writing granting the release to enter the leasehold to perform the proposed mineral activity and making an offer for a monetary amount which he will accept for damages which may be sustained due to the

proposed activity.

3. The leaseholders written response and offer, if rejected, or his failure to respond in writing within 15 days shall cause the matter to be submitted to the board for binding arbitration.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.10 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### **§4103. Applications to the Board for Review**

A. Upon application to the board, on a form provided by the department, the secretary shall fix a return date, of 60 days from the date the application is filed, for the biological survey and damage evaluation report which shall be submitted to the board for its review.

B. The application shall contain a minimum of the following information:

1. The name, address, telephone and FAX number of the owner.

2. The name, address, telephone and FAX number of the leaseholder.

3. The name, address, telephone, FAX number and certificate number of the surveyor hired to perform the biological survey.

4. The description and identifying number of the mineral lease, if applicable.

5. The scope of the proposed mineral activity as it affects the oyster lease in question.

6. The identifying number, survey plat or description of the oyster lease which shall be provided to the owner by the leaseholder, or by the Department of Wildlife and Fisheries, if the leaseholder fails or refuses to submit the information to the owner.

7. Any written offers made by the leaseholder and the written response to the offer by the owner.

C. Upon receipt of a completed application the board shall mail a copy to the leaseholder with a copy of the order showing the return date for the completed survey and damage evaluation report.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:700.10 et seq.

**HISTORICAL NOTE:** Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### **§4105. Biological Test Data; Surveyors; Reports**

A. Biological test data shall consist of a review of the scope of the proposed mineral activity as it affects the oyster leasehold noted in the application; a review of the production records of the oyster leasehold which shall be provided to the biological surveyor by the leaseholder; an onsite inspection of the oyster lease beds and grounds to determine the present condition and productivity of the leasehold; an evaluation of the leasehold; and an estimate of the damages which may be caused by the mineral activity to the leasehold accompanied by supporting documentation.

B.1. Biological surveyors who are to be employed by an owner shall meet the following minimum qualification and shall have submitted same to the board and have been placed on the approved list of biological surveyors by the secretary:

a. Shall hold a master's degree or above in a biological

science.

b. Shall have been certified as an expert relative to oyster biology in at least one Louisiana State District Court.

2. To be placed on the approved list of biological surveyors by the board an interested person shall submit to the secretary his résumé, certified copies of degrees, expert qualifications, and any other documentation to support his claim.

3. The board shall consider all applications for approval by biological surveyors and may require a biological surveyor to be interviewed by the board at its next regular meeting following submission of the application for approval. If the applicant meets the minimum qualifications he shall be approved by the board within 30 days of receipt of his application.

C. Biological test data and evaluation reports shall be prepared incorporating a minimum established criteria to be used uniformly in all surveys and evaluations of oyster leaseholds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

#### **4107. Minimum Standard to Perform Oyster Lease Damage Evaluation**

A. There shall be a minimum standard applied in reparation of all biological test data including but not limited to the following:

1. Identify and describe the waterbottom and the water quality where the oyster lease is located (i.e., bay, bayou, canal, Department of Health and Hospital open and closed seasons, and historical salinity records).

2. Determine the lease number, the total acreage of the lease, the age of the lease (as recorded in the Department of Wildlife and Fisheries), any transfers and the conveyance price.

3. Determine bottom types by poling or other suitable method. Calculate and locate the actual reef acreage within the oyster lease.

4. Determine the living oyster biomass (standing crops, expressed as sacks), mortality, and quality of the reef using the meter squared frame method or equivalent thereof to quantify and qualify the total potential oyster production on the reef.

5. Review production records of the instant lease for a minimum of five years or the life of the reef if less than five years.

6. Review any other pertinent information (i.e., previous field activities, fresh water diversions, etc.) which may be applicable to the specific mineral activity on the reef involved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

#### **4109. Damages**

A. Damages to be considered by the biological surveyor in his initial estimate shall be those which are the probable result of the planned mineral activity (i.e., dredging, seismic surveys, rig moves, pipeline installations, and traversing the

leasehold for purposes of servicing a mineral lease).

B. Additional damages which shall be considered by the biological surveyor after the mineral activity is completed shall include any fortuitous damages such as collision/allision and pollution which may result during the course of the planned event. These damages shall be considered by the board as a part of the planned mineral activity.

C. In accordance with Act 1304 of the Regular Session of the Legislature of 1995, notwithstanding R.S. 56:423 et seq., every oyster lease shall be subject to the following conditions concerning damages incurred by mineral activities of an owner:

1. Any new oyster lease granted by the Department of Wildlife and Fisheries after a mineral lease is granted by the Louisiana State Mineral Board shall be subject to reasonable ingress and egress by the owner of the mineral lease over and through the oyster lease if the oyster lease has obstructed the most practical access route to the mineral lease. Therefore, there shall be no damages allowed to that portion of the oyster lease which is affected by normal activities of the owner while traversing the oyster lease to and from the mineral lease.

2. If a leaseholder does not cultivate at least one-tenth of the leased barren waterbottoms annually in accordance with R.S. 56:430 and the proposed mineral activity only affects the uncultivated portion of the leasehold there shall be no damages allowed to the leaseholder, however, if damage occurs to the waterbottoms which would normally be subject to mitigation by the department, the owner shall be subject to the state for said mitigation.

3. If a leaseholder has been in possession of an oyster lease in excess of one year which has had no prior production and no oysters have been placed under cultivation thereon there shall be no damages assessed against the owner, except for possible mitigation to the state for damages to the waterbottoms.

4. Actual damages to a productive oyster reef within the leasehold shall be determined and the leaseholder shall be compensated therefor. However, the biological surveyor shall calculate the compensation to the leaseholder for returning the reef to a state of production equivalent to that which existed prior to the damage, and, therefore, any compensation for loss of production shall not exceed three years depending on the extent of the damage found on a case by case basis.

5. If that portion of the leasehold which does not contain oyster reef was susceptible to cultivation prior to the proposed mineral activity without unreasonable expense by the leaseholder, the leaseholder shall then be compensated for damages which are caused by the owner to return the waterbottoms to the condition in which it existed prior to the mineral activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

#### **§4111. Damage awards; escrow; permission to begin operations; receipt and release by leaseholder**

A. Upon receipt by the board of the return of five copies of the biological test data and evaluation report from the

biological surveyor a date shall be fixed for a hearing and ruling on damages before the board and notice shall be sent by the secretary to all interested parties.

B. A copy of the biological test data and evaluation report accompanied by all supporting documentation shall be transmitted to each member of the board who shall immediately review the report, and, if necessary make inquiries to the staff of the board to request additional information or clarification.

C. A copy of the biological test data and evaluation report shall be transmitted to the leaseholder for his review with the notice fixing the hearing date.

D. At the hearing the board shall afford an opportunity to either party to be heard regarding the need for additional information. If it is determined by the secretary that additional information is warranted he shall postpone the hearing and issue an order for the return of the required information within 10 days at which time the hearing shall resume and estimated damages shall be awarded.

E. The amount of estimated damages shall be immediately remitted to the board by the owner to be escrowed in the state treasury on behalf of the leaseholder.

F. Upon receipt of the damages the secretary shall authorize the owner to begin operations upon the leasehold.

G. If the leaseholder elects to accept the estimated damages as full and final compensation he shall sign a receipt and release to the owner and upon submittal of same to the board the damages in escrow shall be tendered to the leaseholder by the secretary.

H. If the leaseholder does not elect to accept the estimated damage award in escrow, then, upon completion of the mineral activity the owner shall have a final biological test data and evaluation report performed to be returned in the same manner as the initial report and upon receipt of the final report the secretary shall fix a hearing to determine final damages. If any additional damages are awarded the owner shall remit that amount to the board within five days and the secretary shall pay all sums awarded to the leaseholder as full and final damages.

I. If the leaseholder has accepted the estimated damages, but, within 10 days of completion of the mineral activity he believes that additional damages have occurred he may employ, at his own expense, the same biological surveyor to perform a final biological test data and evaluation report. In this event the leaseholder shall file an addendum to the original application which shall have a return date fixed by the secretary as was done in the original filing. After the return of the final biological test data and evaluation report the secretary shall fix a hearing to determine final damages. If any additional damages are awarded the owner shall remit that amount to the board within five days and the secretary shall pay all sums awarded to the leaseholder as full and final damages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### **§4113. Liability**

A. The purpose of Act 1304 of the Regular Session of the Legislature of 1995 is to establish actual damages to oyster leases caused by mineral activities over and on the oyster beds and grounds, therefore, the liability of the owner to the leaseholder shall not be expanded by the Act.

B. The secretary, the assistant secretary of the Office of Conservation, the biologist from the Office of Fisheries in the Department of Wildlife and Fisheries, the member of the Louisiana Oyster Task Force, and the staff of the Oyster Lease Damage Evaluation Board shall not be liable in any manner to the leaseholder, the owner their successors or assigns in relation to their functions in these matters.

C. The biological surveyor employed to obtain biological test data from a leasehold shall not be subject to any liability to the leaseholder, nor shall he be liable for trespass if he has first attempted to get permission of the leaseholder to enter the lease. If the biological surveyor has contacted the leaseholder for permission and the leaseholder unreasonably withholds permission the biological surveyor may enter the leasehold to perform the survey utilizing written authority from the secretary without obtaining said permission from the leaseholder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

### **§4115. Adjudication Notice; Hearing; Records**

A. The secretary shall fix the time and place for the hearings. All hearings shall be held in a convenient place, accessible to the public, in the City of Baton Rouge.

B. Any hearing may for valid cause be continued by the secretary or the presiding officer.

C. Parties shall have the right, but shall not be required, to be represented by counsel. Any such counsel must be duly licensed to practice law in the state of Louisiana.

D. In an adjudication of any matter before the board, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

E. The notice shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes and rules involved;
4. a brief statement of the matters to come before the board;
5. in the event of multiple hearings, an agenda of the matters to be heard and the order of the hearings;
6. the date on which any person who may object to the matters asserted must present to the secretary a written objection. A written objection shall contain a brief statement of the basis for the objection.

F. Opportunity shall be afforded all parties to timely respond and present evidence on all issues of fact, and argument on all issues of law and policy involved, and to conduct such cross-examination as may be required for a full

and true disclosure of all facts.

G. Informal disposition may be made, at any time, of any case of adjudication by stipulation, agreed settlement, consent order or default.

H. The record in a case of adjudication shall include:

1. all pleadings, motions and intermediate rulings;
2. all evidence received or considered including testimony, exhibits, and supporting documentation;
3. a statement of matters officially noticed, except matters so obvious that statement of them would serve no useful purpose;
4. any offers of proof, objections and rulings thereon;
5. proposed findings, conclusions and exceptions thereto;
6. any decision, opinion or report by the secretary.

I. The secretary shall make a full transcript of all proceedings and shall, at the request of any party or person, furnish said party with a copy of the transcript or any part thereof upon payment of the cost thereof.

J. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

#### §4117. Decisions and Orders

Any final decision or order shall be in writing. All parties shall be notified by mail of any decision or order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

#### §4119. Rehearings

A. A decision or order in these proceedings shall be subject to rehearing, reopening or reconsideration by the secretary within 10 days from the date of its entry. The grounds for such action shall be either that:

1. the decision or order is clearly contrary to the rules and the evidence;
2. the party has discovered, since the hearing, evidence important to the issues which he could not with due diligence have obtained before or during the hearing;
3. there is a showing that issues not previously considered ought to be examined in order to dispose of the matter.

B. The application of a party for rehearing, reconsideration or review, and the order of the secretary, if granting it, shall set forth the grounds which justify such action. The rehearing, reconsideration or review shall be confined to those grounds upon which the rehearing, reconsideration or review was ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

#### §4121. Ex Parte Consultations and Recusations

Unless required for the disposition of ex parte matters authorized by these rules, the secretary shall not communicate, directly or indirectly, in connection with any issue of fact, with any party or his representative, or with any officer,

employee or agent engaged in the performance of investigative or advocating functions, except upon notice or opportunity for all parties to participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

#### §4123. Judicial Review of Adjudication

A. Any person who is aggrieved by a final decision or order in these proceedings is entitled to judicial review thereof whether or not he has applied to the secretary for rehearing herein.

B. Proceedings for judicial review and damages against the owner may be instituted by filing a petition in the Civil District Court for the Parish of East Baton Rouge or the parish in which the immovable oyster lease is located, within 30 days after the mailing of notice of the final decision by the secretary, or if a rehearing is requested, within 30 days of denial of rehearing or the final decision thereon. Copies of the petition shall be served upon the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:700.10 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of the Secretary, LR 21:

In accordance with the laws of the State of Louisiana, and with reference to the provisions of Title 56 of the Revised Statutes of 1950, a public hearing will be held at 10 a.m., October 25, 1995, in the Conservation Hearing Room, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA. If accommodations are required under the Americans with Disabilities Act, please contact the Office of the Secretary at (504) 342-4500, within 10 working days prior to the hearing date.

At such hearing the secretary of the Department of Natural Resources will consider evidence relative to the rules governing the administration of the Oyster Lease Damage Evaluation Board. The proposed amendments represent the views of the secretary as of this date; however, the secretary reserves the right to make additions or deletions prior to final adoption.

Comments and views regarding the proposed rule should be directed in written form to be received not later than 5 p.m., October 23, 1995. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. Comments should be directed to: Jack McClanahan, Secretary, Box 94396, Baton Rouge, LA 70804-4396.

Jack McClanahan  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Oyster Lease Damage Evaluation Board

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Implementation cost to the state is \$39,750 for the first year 1995/96. There will be no implementation cost or savings to local governmental units.

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

There will be no effect on collections of local governmental units.

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

Estimated additional cost to producers of oil and gas is:

Fees assessed in FY 95/96 \$39,750

Fees assessed in FY 96/97 \$79,500

Fees assessed in FY 97/98 \$79,500

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition. There may be increased employment of biologist in the private sector to perform biological surveys.

Robert D. Harper  
Undersecretary  
9509#130

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Board of Parole**

**Quorum for Hearings (LAC 22:XL)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Public Safety and Corrections, Board of Parole, hereby gives notice of its intent to amend the rules, regulations, criteria, policies, procedures and guidelines of the Louisiana Board of Parole.

This proposed rule was adopted as an emergency rule effective August 10, 1995 and appeared on page 775 of the August, 1995 *Louisiana Register*.

**Title 22**

**CORRECTIONS, CRIMINAL JUSTICE AND LAW  
ENFORCEMENT**

**Part XL. Board of Parole**

**VII. Meetings of the Board**

A.1. ...

2. Three votes are required to grant parole. If the panel is more than three members, a two-thirds vote of the members present and voting is required to grant parole. Two out of three votes are required to revoke parole. If the panel is more than three members, a majority vote of the members present and voting is required to revoke parole. If two board members vote to continue the case, it shall be continued.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 15:574.2(B)(1) and R.S. 15:574.9(D).

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 21:

Interested persons may submit written comments to Ronald Bonvillian, Chairman, Board of Parole, Box 94304, Baton Rouge, LA 70804-9304. Comments will be accepted through the close of business at 4:30 p.m., October 20, 1995.

Ronald Bonvillian  
Chairman

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

**RULE TITLE: Parole Board Hearing - Quorums**

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

There is no implementation costs or savings to state or local governmental units, as the only change is to what constitutes a quorum to grant, deny or continue a hearing.

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 NONGOVERNMENTAL GROUPS (Summary)

There are no additional costs or economic benefits directly affecting persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no effect on competition and employment.

James M. LeBlanc  
Undersecretary  
9509#117

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

**Department of Social Services  
Office of Community Services**

**Multiethnic Placement (LAC 67:V.401)**

The Department of Social Services, Office of Community Services shall adopt the following rule in the Adoption and Foster Care Programs. Emergency rulemaking will be published in the October, 1995, issue of the *Louisiana Register*.

This rule is mandated by Public Law 103-382, Part E-Multiethnic Placement, Sections 551 - 555 passed by the Congress of the United States October 20, 1994 and effective October 21, 1995. This rule prohibits discrimination based on race, color, or national origin in the decision to terminate parental rights, foster care, and adoptive placements.

**Title 67**

**SOCIAL SERVICES**

**Part V. Office of Community Services**

**Subpart 1. General Administration**

**Chapter 4. Placements**

**§401. Multiethnic Placement**

A. OCS and its subrecipients involved in adoption or foster care placements may not:

1. categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or

2. delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color or national origin of the adoptive or foster parent, or the child, involved.



B. OCS and its subrecipients involved in adoption or foster re placements may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.

C. The term *placement decision* means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of OCS and its subrecipients, to seek the termination of birth parents' rights or otherwise make a child legally available for adoptive placement.

D. Any individual who is aggrieved by an action in violation of Subsection A of this Section taken by OCS or its subrecipients shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

E. Nothing in this rule shall be construed to affect the application of the Indian Child Welfare Act of 1978, 25 USC 1911 et seq.

AUTHORITY NOTE: Promulgated in accordance with P. L. 103-2, Part E - Multiethnic Placement, Sections 551- 555.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:

Interested persons may submit written comments within 20 days of publication of this notice to the following address: Sandra L. Kelley, Assistant Secretary, Box 44367, Baton Rouge, LA 70804. She is responsible for responding to inquiries.

Gloria Bryant-Banks  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Multiethnic Placement**

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

There are no savings. The only cost in FY 95-96 is \$500 for printing policy.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will not be any costs nor economic benefits to directly affected persons or nongovernmental groups.

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

There will be no effect on revenue competition and employment.

Harry McMahon  
Budget Director  
9/9/94

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Social Services  
Office of the Secretary  
Bureau of Licensing**

Child Placing Agencies with/without Adoption Services  
(LAC 48:I.Chapter 41)

The Department of Social Services, Office of the Secretary, Bureau of Licensing, proposed to amend, in the August, 1995 *Louisiana Register*, page 880, the Louisiana Administrative Code, Title 48, Part 1, Subpart 3, Licensing, Chapter 41, Child Placing Agencies With and Without Adoption Services.

Due to a typographical error in the deadline date for receiving public comments, the bureau is extending this deadline to 4:30 p.m., October 10, 1995. Comments should be forwarded to Steve Phillips, Office of the Secretary, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078.

Gloria Bryant-Banks  
Secretary

9509#127

**NOTICE OF INTENT**

**Department of Transportation and Development  
Board of Registration for Professional  
Engineers and Land Surveyors**

Bylaws (LAC 46:LXI.Chapter 27)

In accordance with the R.S. 49:950 et seq., notice is hereby given that the Board of Registration for Professional Engineers and Land Surveyors intends to revise LAC 46:LXI.Chapter 27 as follows.

**Title 46  
PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXI. Professional Engineers and Land Surveyors  
Subpart 2. Bylaws**

**Chapter 27. General Information**

**§2701. Domicile**

A. Domicile. The domicile of the board shall be the city of Baton Rouge.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:117 (May 1979), LR 11:1179 (December 1985), LR 21:

### §2703. Board Member

A. - B. ...

C. Date of Elections. The election of board officer shall take place not later than at the board's annual meeting. In the event that an officer cannot complete his term, an election in order to fill the unexpired term shall be scheduled at the earliest practical regular or special meeting.

D. Duties

1. Chairman. The chairman shall preside at all meetings, appoint all committees, except as otherwise provided, and shall, together with the secretary, sign all certificates of registration issued by the board. The chairman shall compile certificates of registration issued by the board. The chairman shall compile the agenda for each regular and special meeting. The chairman shall be empowered to authorize expenditures of funds, in the beneficial interests of the board and without its prior approval, up to an aggregate amount of \$5,000, and any expenditures made under this authorization shall be reported to and ratified by the board at its next regular meeting.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1179 (December 1985), LR 19:54 (January 1993), LR 21:

### §2705. Standing Committees

A. Committees. The board shall establish the following committees: Executive Committee, Engineering Committees, Land Surveying Committee, Engineering-in-Training Committee, Liaison and Law Review Committee, Curricula Committee, Finance Committee, Nominations Committee, and Complaint Review Committee.

B. - C. ...

D. Engineering Committees

1. The chairman of the board shall appoint not less than two members to each of the branches of engineering committees listed in §901 and §902.

- a. Agricultural Engineering Committee;
- b. Chemical Engineering Committee;
- c. Civil Engineering Committee;
- d. Control Systems Engineering Committee;
- e. Electrical Engineering Committee;
- f. Environmental Engineering Committee;
- g. Industrial Engineering Committee;
- h. Mechanical Engineering Committee;
- i. Metallurgical Engineering Committee;
- j. Mining Engineering Committee;
- k. Nuclear Engineering Committee;
- l. Petroleum Engineering Committee.

2. Each of these committees shall:

- a. review applications for registration in each respective branch of professional engineering;
- b. recommend approval or disapproval of application;
- c. supervise the selection of examinations on principles and practice of engineering for the respective branches; and
- d. recommend passing scores for their respective written examinations.

E. - F. ...

G. Liaison and Law Review Committee. The chairman shall appoint a Liaison and Law Review Committee to work with similar committees of professional and technical organizations on matters of mutual concern. The committee shall make recommendations to the board in matters concerned with the Registration Law and the rules and regulations of the board.

H. Engineering Curricula Committee. The chairman shall appoint a Curricula Committee to evaluate and make recommendations to the board concerning the quality of the engineering curricula, along with an evaluation of the faculties and facilities of schools within the state of Louisiana. The Engineering Curricula Committee shall have the power to make inspections in the course of its evaluations. The committee chairman shall coordinate the selection of board observers for all ABET visitations in the state.

I. Finance Committee. The chairman shall appoint a Finance Committee composed of not less than two board members. The secretary will serve as ex-officio member of this committee. It will be the responsibility of the committee to make studies, reports and recommendations to the board on fiscal matters. At the end of the fiscal year, the Finance Committee shall review the annual audit and prepare a budget for presentation to the board at its next meeting.

J. ...

K. Complaint Review Committee. Review committee shall be composed of three standing members, the executive secretary, board investigator, board attorney and one board member appointed on a case by case basis. It shall be the responsibility of the committee to review the results of investigations of complaints against registrants and unlicensed persons and recommend appropriate action to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1180 (December 1985), LR 19:54 (January 1993), LR 21:

### §2707. The Executive Secretary

A. ...

B. Officer of Board. Although not a member of the board, the executive secretary shall be an officer of the board and ex-officio member on all committees.

C. Duties of the Executive Secretary. The executive secretary shall:

1. ...
2. record and file all applications, examinations, registrations, suspensions and revocations;
3. - 5. ...
6. address inquiries to references to verify the qualifications, experience and character of applicants as directed by the board;
7. - 24. ...
25. have an audit made of all receipts and disbursements at the closing of each fiscal year (June 30) by a board certified public accountant.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:688.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1180 (December 1985), LR 19:55 (January 1993), LR 21:

**§2709. Meetings**

A. - D. ...

E. Meetings Dates. Written, public notice of the dates, times, and places of all regular meetings shall be given at the beginning of each fiscal year.

F. Separate Notice of all Meetings. In addition, separate written, public notice of any regular, special, or rescheduled meeting shall be given no later than 24 hours before the holding of the meeting. This separate notice shall include the agenda, date, time and place of the meeting.

G. Posting of Notice. The public notice discussed in Section 2709.E and F shall include (1) posting a copy of the notice at the office of the board; or (2) publication of the notice in the board newsletter no less than 24 hours before the meeting.

H. Notice to Board Members. Notice of all meetings, in conformity with Section 2709.E and F shall be given in writing to each member by the executive secretary.

I. Quorum. A simple majority of board members shall constitute a quorum for the transaction of business.

J. *Roberts Rules of Order.* *Roberts Rules of Order* shall govern the proceedings of the board at all meetings, except as otherwise provided herein or by statute.

K. Location of Meetings. All meetings shall be held at the board office, unless, in the judgement of the chairman, it is necessary or convenient to meet elsewhere.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:688.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1181 (December 1985), LR 19:55 (January 1993), LR 21:

**2715. Voting**

A. General Provisions. Unless otherwise specified in the following Subsections a simple majority of a quorum of the board at a meeting properly noticed and convened is necessary in order to elect an officer or approve a measure before the board.

B. - H. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:688

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 11:1181 (December 1985), LR 19:55 (January 1993), LR 21:

**2719. Publications of the Board**

A. ...

B. Official Journal. The official journal of the board shall be a newsletter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:688

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1182 (December 1985), LR 19:55 (January 1993), LR 21:

**§2723. Disbursements**

A. - B. ...

C. Required Signatures on Checks. All checks must be signed by two of the following individuals: chairman, vice-chairman, secretary, executive secretary, or board member and/or staff person designated by the board.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:688.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 2:52 (February 1976), amended LR 5:118 (May 1979), LR 11:1182 (December 1985), LR 21:

A copy of the revisions of the bylaws is available for review by the public at the Louisiana State Board of Registration for Professional Engineers and Land Surveyors Office, 10500 Coursey Boulevard, Suite 107, Baton Rouge, LA 70816. Interested persons may call the office at (504) 295-8522 to make arrangements to review the bylaws. Written comments will be accepted through October 18, 1995.

Paul L. Landry, P.E.  
Executive Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bylaws**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no implementation costs (savings) to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There are no estimated effects on competition and employment.

Paul L. Landry, P. E.  
Executive Secretary  
9509#109

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Transportation and Development Office of the General Counsel

#### Illegal Outdoor Advertising Signs (LAC 70:I.144)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Department of Transportation and Development intends to promulgate a rule entitled "Illegal Outdoor Advertising Signs" in accordance with R.S. 48:461.

#### Title 70

### Department of Transportation and Development

#### Part I. Office of the General Counsel

#### Chapter 1. Outdoor Advertising Signs

#### §144. Illegal Outdoor Advertising Signs

Permits for outdoor advertising signs shall be denied to any applicant which, at the time of application, owns a sign which fails to comply with the specifications contained in R.S. 48:461 et seq., and/or rules promulgated pursuant thereto, or the permit issued for said sign.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 48:461, et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Transportation and Development, LR 21:

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 Mitchell Lopez, Traffic Planning Supervisor, Department of Transportation and Development, Box 94245, Baton Rouge, LA 70804-9245. Telephone (504)358-9131.

Jude W. P. Patin,  
Secretary

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

##### RULE TITLE: Illegal Outdoor Advertising Signs

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no implementation costs to state or local governmental units. Federal funding to DOTD will be jeopardized, however, if effective control of outdoor advertising is not exercised by DOTD.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will be no costs or benefits to directly affected persons unless such persons have existing illegal outdoor advertising. Those persons must conform to the statutory law and departmental regulation in order to erect new signage.

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

There is no anticipated effect on competition or employment.

Jude W. P. Patin  
Secretary  
9509#084

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Office of Fisheries

#### Gill and Trammel Nets Marking System (LAC 76:VII.181)

The secretary of the Department of Wildlife and Fisheries hereby advertises his intent to adopt a rule for marking gill and trammel nets used to take freshwater commercial fish.

The text of this proposed rule may be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the rule to Bennie Fontenot, Jr., Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Friday, November 10, 1995.

Joe L. Herring  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Gill and Trammel Nets Marking System

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed rule will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This rule will not increase nor decrease costs to the public.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This rule will have no effect on competition and employment.

Fredrick J. Prejean, Sr.  
Undersecretary  
9509#088

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Office of Fisheries

Saltwater Rod and Reel License (LAC 76:VII.405)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures relative to the proof of income criteria for applicants for a saltwater commercial rod and reel license in accordance with the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

The text of this proposed rule may be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Glynn Carver  
Vice-Chairman

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Saltwater Rod and Reel License

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

There will be no implementation costs or savings to state or local governmental units as a result of this rule.

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

There will be no effect on revenue collection of state or local governmental units as a result of this rule.

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

Applicants for the commercial rod and reel license may incur some unknown, minimal costs for obtaining the required documentation for proof of income.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition and employment.

Fredrick J. Prejean, Sr.  
Undersecretary  
9509#089

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Wildlife and Fisheries Office of Fisheries

Traversing Permit (LAC 76:VII.403)

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission does hereby give notice of their intent to promulgate a rule to establish the rules and regulations for the issuance of Traversing Permits to persons authorized to possess gill nets, trammel nets, strike nets, and seines within the territorial boundaries of the state while traversing state waters to and from the federal exclusive economic zone.

The text of this proposed rule may be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Joe L. Herring  
Secretary

Glynn Carver  
Vice-Chairman

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Traversing Permit

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

Implementation costs with respect to printing the applications and permits will be minimal. Costs associated with enforcement of the provisions of the permit will be extensive. These costs will be funded by the Commercial Fisherman's Economic Assistance Fund with monies generated by an additional \$3 fee for recreational saltwater funding.

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

This rule will result in increased revenue collections by the state through issuance of the Traversing Permit. The amount is unknown since the number of permits to be issued cannot be projected.

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

Purchasers of the Traversing Permit will incur the cost of buying the permits (\$250 each).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will not have any effect on competition and employment.

Fredrick J. Prejean, Sr.  
Undersecretary  
9509#090

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Wildlife and Fisheries  
Office of Management and Finance**

**Net Buy-Back Program (LAC 76:XVII.301)**

The Department of Wildlife and Fisheries does hereby give notice of its intent to promulgate a rule to establish a schedule showing the amount to be paid for each type and size of net to be purchased under the Net Buy-Back Program portion of the Commercial Fisherman's Economic Assistance Program and to establish procedures for application. This is in accordance with the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

**Title 76**

**WILDLIFE AND FISHERIES**

**Part XVII. Commercial Fisherman's Assistance  
Program**

**Chapter 3. Net Buy-Back Program**

**§301. Criteria for Qualification; Procedures**

A. Until January 1, 1996, the Department of Wildlife and Fisheries shall purchase from qualified persons those commercial fishing nets that have been rendered illegal or useless due to the enactment of the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

B. In order to qualify, persons must have applied for assistance under the Commercial Fisherman's Assistance Program on or before October 1, 1995, and must have met all of the following criteria:

1. must have purchased a saltwater gill net license in at least two of the years 1995, 1994, and 1993;
2. during two of those years shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species;
3. shall not have been convicted of any fishery-related offense that constitutes a class three or greater violation; and
4. must have been a bona fide resident of Louisiana on June 30, 1995.

C. Proof of income shall be provided by the applicant in the form of a copy of his federal tax return, including Schedule C of federal form 1040, which has been certified by the Internal Revenue Service. The Department of Wildlife and Fisheries can provide the applicant with the appropriate Internal Revenue Service form to request this. In the event that the certified copy of the tax return, including Schedule C, does not confirm the applicant's claim that more than 50 percent of the income was earned from the legal capture and sale of seafood species, the applicant shall provide a certified,

audited return to that effect prepared and signed by a Certified Public Accountant (CPA) which includes copies of all documents relied upon by the CPA in preparation of the audit. Said documentation shall be in the form of records which the applicant would rely on to document his return to the Internal Revenue Service. Tax returns for at least two of the years 1995, 1994, and 1993 shall be provided by the applicant.

D. Beginning September 1, 1995, qualified persons desiring to have their nets purchased by the Department of Wildlife and Fisheries may obtain an application form provided by the department from any departmental district office; the completed form shall include all information necessary to assist in the determination of the eligibility status of the applicant. All requested information regarding size, type and number of nets must be provided. The completed form, along with proof of income as described herein, a copy of the applicant's Louisiana driver's license, and copies of appropriate saltwater gill net licenses, shall be submitted no later than October 1, 1995, to the Commercial License Section of Wildlife and Fisheries located at 2000 Quail Drive, Baton Rouge, LA or by mail to Box 98000, Baton Rouge, LA 70898. Applicants will be notified by mail as to the disposition of their application.

E. Only those nets that were legal for use in the saltwater areas of this state on June 1, 1995, and only those nets in usable condition, will be eligible for purchase under the provisions of Act 1316.

F. Applicants must have had a gear license issued in their name for at least one of the years 1995, 1994, or 1993, for the specific type of net(s) being presented for purchase. This is in addition to the requirements for having a saltwater gill net license for two of the three years.

G. Monetary reimbursement for nets to be purchased under this Rule shall be determined based on the availability of funds collected from the issuance of the Louisiana Marine Resources Conservation Act Stamp. Funds collected through June 30, 1996, will be distributed as follows: 30 percent to the Enforcement Division of the Department in accordance with the Act, and the remaining 70 percent to be made available for the net buy-back portion of the Commercial Fisherman's Assistance Program. Subsequent to June 1996, 70 percent of the revenue collected from the LMRC Stamp will be used for the remainder of the Commercial Fisherman's Assistance Program as defined in Act 1316, R.S. 56:13.1.C.

H. The disbursement of available funds for nets shall be calculated on a pro rata basis to accommodate the number of qualified applicants at a rate not to exceed 50 percent of the average cost of each qualifying net. The following is a schedule of the maximum amount to be paid for each type and size of net based upon 50 percent of the average standard 1995 catalog prices not including sales tax, shipping charges, or options. Actual prices to be paid will be limited by the number of qualifying nets and by the amount of revenue collected.

## NOTICE OF INTENT

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

Black Drum, Sheepshead, and Flounder Harvest  
(LAC 76:VII.349)

<u>Mesh Depth</u>	<u>Gill Nets Price per foot</u>	<u>Seines Price per foot</u>
4' - 6'	\$ .25	\$ .76
over 6' - 8'	\$ .30	\$ .80
over 8' - 10'	\$ .38	\$ .87
over 10' - 12'	\$ .42	\$ .92
over 12' - 14'	\$ .44	\$ .96
over 14'	\$ .53	\$ 1.02

  

<u>Trammel Nets Price per foot</u>	
4' - 6'	\$ .38
over 6' - 8'	\$ .40
over 8' - 10'	\$ .43
over 10'	\$ .45

#### Fish Trawls

Complete \$ 11.22 per foot of trawl width

Trawl only \$ 6.84 per foot of trawl width

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13(1)(D).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Management and Finance, LR 22:

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Joe L. Herring  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Net Buy-Back Schedule

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

Implementation cost to the state is unknown at this time since it is dependent on the number of nets which will be submitted for buy-back. The cost to implement will be funded with monies deposited to the Commercial Fisherman's Economic Assistance Fund.

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

This rule will have no effect on the revenue collections of state or local government units.

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

The proposed rule will likely result in economic benefit and costs to qualified sellers of their nets. There is not sufficient data at this time to determine the extent of economic benefit or cost.

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

This rule will not have any effect on competition and employment.

Fredrick J. Prejean, Sr.  
Undersecretary  
>509#062

David W. Hood  
Senior Fiscal Analyst

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a rule (LAC 76:VII.349) to establish regulations governing the commercial harvest of black drum, flounder, sheepshead and other saltwater finfish (other than red drum, spotted seatrout, and mullet) with pompano strike nets. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:6(10); 56:6(25)(a); 56:326.1; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4. The text of this proposed rule may be viewed in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver  
Vice-Chairman

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Black Drum, Sheepshead, Flounder Harvest

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

There will be unquantifiable state governmental implementation costs. Evaluation of applicants for permits, issuance of permits, tracking permit reports, and enforcement costs will require expenditures of state manpower but these expenses are not measurable, due to lack of data.

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

There will be an unestimable decline of revenues to the Conservation Fund from the proposed rule. There will be declines in revenues from existing commercial license and permit sales. Overall change in revenue is not possible due to lack of data.

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

Rule is intended to provide regulations consistent with Act 1316 of the 1995 Regular Legislative Session. This change may

reduce the benefits received from fishing to the harvesters using pompano strike nets by decreasing the time (season, weekend, and night closures) during which the gear may be used, and by restricting the methods by which the gears may be operated and the quantity of gear used for harvest (changes required by statute). The overall dimensions of these changes are not estimable at this time, due to lack of data. Benefits may be received by some harvesters due to reduced competition resulting from criteria required to obtain a permit, which should reduce the numbers of harvesters. Verification of these projected impacts is presently impossible due to lack of information. Direct costs to commercial fishermen for permits and fees will be increased by documentation requirements for a permit application, required by legislation.

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

This rule will probably provide a slight negative effect on competition and employment. Proposed rule would reduce the numbers of commercial harvesters, reducing competition and employment in that sector. Some of these persons may redirect their fishing effort into other geographic areas, other fisheries or into nonfishing activities. No data is presently available to estimate the dimensions of this change.

Fredrick J. Prejean, Sr.  
Undersecretary  
9509#087

John R. Rombach  
Legislative Fiscal Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Commercial Fisherman's Assistance Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no implementation costs or savings to state or local governmental units as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no effect on revenue collections of state or local governmental units as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Applicants for economic assistance may incur some unknown, minimal costs for obtaining the required documentation for proof of income.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed rule will have no effect on competition and employment.

Fredrick J. Prejean, Sr.  
Undersecretary  
9509#063

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Commercial Fisherman's Assistance  
Program (LAC 76:XVII.101)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule to establish the procedures for determining proof of income of applicants for economic assistance under the Commercial Fisherman's Assistance Program established by the Louisiana Marine Resources Conservation Act of 1995 (Act 1316).

The text of this proposed rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including, but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit written comments until 4:30 p.m., November 2, 1995, to: Wynnette Kees, Fiscal Officer, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000.

Glynn Carver  
Vice-Chairman

**NOTICE OF INTENT**

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

**Harvest of Mullet (LAC 76:VII.343)**

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a rule (LAC 76:VII.343) to amend the regulations governing the commercial harvest of mullet. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included R.S. 56:6(25)(a); 56:326.3; 56:333; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:333.

The text of this proposed rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver  
Vice-Chairman



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Harvest of Mullet**

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

There will be unquantifiable state governmental implementation costs. Evaluation of applicants for permits, issuance of permits, tracking permit reports, and enforcement costs will require expenditures of state manpower, but these expenses are not measurable, due to lack of data.

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

There will be an unestimable decline of revenues to the Conservation Fund from the proposed rule. There will be declines in revenues from existing commercial license and permit sales. Overall change in revenues is not possible due to lack of data.

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

Rule is intended to provide regulations consistent with Act 1316 of the 1995 Regular Legislative Session. This change may reduce the benefits received from fishing to the harvesters by decreasing the time (season, weekend, and night closures) during which the species is available for allowable harvest, and by restricting the quantity of gear with which this harvest may occur (changes required by statute). The overall dimensions of these changes are not estimable at this time, due to lack of data, but seasonal closures alone may cause loss of at least \$1 million in dockside value of landings during those periods. Benefits may be received by some harvesters due to reduced competition resulting from criteria required to obtain a permit, which should reduce the numbers of harvesters. Verification of these projected impacts is presently impossible due to lack of information. Direct costs to commercial fishermen for permits and fees will be increased by documentation requirements for a permit application, required by legislation.

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

This rule will probably provide a slight negative effect on competition and employment. Proposed rule would reduce the numbers of commercial harvesters, reducing competition and employment in that sector. Some of these persons may redirect their fishing effort into other geographic areas, other fisheries, or into nonfishing activities. No data is presently available to estimate the dimensions of this change.

Frederick J. Prejean, Sr.  
Undersecretary  
509#076

John R. Rombach  
Legislative Fiscal Officer

**NOTICE OF INTENT**

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

**Spotted Seatrout Harvest  
(LAC 76:VII.341)**

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a rule (LAC 76:VII.341) to

amend the regulations governing the commercial harvest of spotted seatrout. These regulations are required to effectuate the requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in Act Number 157 of the 1991 Regular Session of the Louisiana Legislature, R.S. 56:6(25)(a); 56:325.3; 56:326.3; and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.3.

The text of this proposed rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed rule to: Harry Blanchet, Marine Fisheries Division, Louisiana Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to November 2, 1995.

Glynn Carver  
Vice-Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Spotted Seatrout Harvest**

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

There will be a nonquantifiable increase in state governmental implementation costs. Evaluation of applicants for permits, issuance of permits, tracking permit reports, and enforcement of the provisions of the rule will require expenditures of state manpower, but these expenses are not measurable, due to lack of data.

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

There will be changes in state revenues of undeterminable magnitude as a result of the proposed rule. Increases in permit fees will be partially offset by lower sales for some licenses. Recreational fishing license sales may increase slightly as well. Estimation of overall change in revenues is not possible due to lack of data.

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

Rule is intended to provide regulations consistent with Act 1316 of the 1995 Regular Legislative Session. This change may reduce the benefits received from fishing to commercial harvesters by decreasing the time during which the species is available for allowable harvest, and by restricting the gear with which this harvest may occur (change required by statute). The dimensions of these changes are not estimable at this time, due to lack of data. Benefits are realized as the rules will allow commercial harvest with gears otherwise disallowed (rod and reel). Recreational harvesters may benefit from reduced

competition for the resource. This may encourage increased participation in the recreational industry which may contribute to local and state economies by increasing sales and employment. Verification of these conjectures is presently impossible due to lack of information. Direct costs to commercial fishermen for permits and fees will be increased by the requirement for a permit fee, required by legislation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule may provide a slight negative or positive effect on competition or employment. Proposed rule would reduce the number of commercial harvesters, reducing competition in that sector, and between recreational and commercial sectors. Some commercial harvesters may redirect their fishing effort into other geographic areas, other fisheries, or into nonfishing activities. Employment in the recreational sector may increase as a result of increased fishing activities in that sector. No data is presently available to estimate the dimensions of this change.

Fredrick J. Prejean, Sr.  
Undersecretary  
9509#077

John R. Rombach  
Legislative Fiscal Officer

## POTPOURRI

### POTPOURRI

**Department of Agriculture and Forestry  
Office of Agricultural and Environmental Sciences  
Horticulture Commission**

**Landscape Architect Registration Examination**

The Landscape Architect Registration Examination will be given December 4-5, 1995 beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending application and fee is September 15, 1995.

Further information pertaining to the examination may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, telephone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify our office prior to October 13, 1995. If you have any questions, please call our office at (504) 925-7772.

Bob Odom  
Commissioner

9509#129

## POTPOURRI

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

**Calcasieu Parish Redesignation**

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 gives notice that a change in the "State Implementation Plan" for Ozone abatement procedures has been initiated as follows:

Redesignation of Calcasieu Parish to Ozone Attainment status is being proposed by Louisiana. Calcasieu was previously designated as marginal ozone nonattainment. Guidelines provided to the state by EPA were followed in preparing the 1979 submittal with the result that the Revised State Implementation Plan was approved by EPA. Sufficient improvement in ozone monitoring data in this parish has been shown in the intervening years to qualify for attainment status.

A public hearing will be held at 7 p.m. on Friday, October 27, 1995, in the Calcasieu Parish Police Jury Meeting Room, 1015 Pithon, Lake Charles, LA, to receive comments on this proposed redesignation.

Interested persons are invited to attend and submit oral comments on the proposal. All interested persons are invited to submit written comments concerning the SIP change. Such comments should be submitted no later than November 3, 1995, to Annette Sharp. She may be contacted at (504) 765-0914. Written comments should be mailed to Ms. Sharp at the following address: Air Quality Regulatory Division, Box 82135, Baton Rouge, LA, 70884-2135. A copy of the SIP changes may be viewed at the Air Quality Regulatory Division from 8 a.m. to 4:30 p.m., Monday through Friday, at:

- (1) DEQ Headquarters, Air Quality Regulatory Division, 7290 Bluebonnet, Second Floor, Baton Rouge, LA; or,
- (2) DEQ Southwest Regional Office, 3519 Patrick Street, Room 265A, Lake Charles, LA.

Gus Von Bodungen  
Assistant Secretary

9509#126

## POTPOURRI

**Office of the Governor  
Oil Spill Coordinator's Office**

**Oil Spill Contingency Plan**

In accordance with R.S. 30:2459(c), the Oil Spill Coordinator's Office hereby announces that the state oil spill contingency plan is available for distribution. The Louisiana State Oil Spill Contingency Plan defines the way the state of Louisiana will respond to actual or threatened unauthorized

discharges of oil and direct clean up of pollution from such discharges. This plan was developed in cooperation with local, state, and federal agencies who regulate oil spill response, clean up, and restoration activities. It was written to complement and augment existing plans, and to address specific concerns of the state of Louisiana. The plan will be revised annually with the revisions being published each year on this anniversary.

The plan is available for viewing at the Louisiana Oil Spill Coordinator's Office, 1885 Wooddale Blvd, 12th Floor, Baton Rouge, LA between the hours of 8:30 a.m. to 12 p.m. and 1 p.m. to 4:30 p.m., Monday through Friday.

Copies of the plan can be purchased through Kinko's Business Services, telephone (504) 267-0203, 525 Florida Street, Baton Rouge, LA 70801, at a cost of \$15 (3 hole drilled) plus tax. Add an additional \$2.50 to bind.

For further information, interested persons are invited to call Beckey Vincent at the Oil Spill Coordinator's Office at (504) 922-3230.

Roland J. Guidry  
Louisiana Oil Spill Coordinator

9509#118

## POTPOURRI

### Department of Transportation and Development Sabine River Compact Administration

#### Fall Meeting Notice

The fall meeting of the Sabine River Compact Administration will be held at the Flagship Hotel Over the Water, Galveston, Texas on Friday, November 3, 1995 at 10 a.m.

The purpose of the meeting will be to conduct business as programmed in Article IV of the bylaws of the Sabine River Compact Administration.

The spring meeting will be held at a site in Louisiana to be designated at the above described meeting.

The contact person concerning this meeting is Mary H. Gibson, Secretary, Sabine River Compact Administration, 15091 Texas Highway, Many, LA 71449, (318)256-4112.

Mary H. Gibson  
Secretary

9509#128

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