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EMERGENCY RULES

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences

"One Day to Make a Difference" — Pest Management

The Commissioner of Agriculture and Forestry is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to his authority under R.S. 3:3203(A) adopts the rules set forth below:

The members of the Louisiana Pest Control Association (the "association") have scheduled June 12, 1995, through July 12, 1995, for its "One Day to Make a Difference" activity. During this month, members of the association will work to help individuals and organizations in need better their quality of life through improved pest management by donating pest control services at locations that are in need of, but unable to afford such services.

Recognizing that the "One Day to Make a Difference" program greatly benefits the public welfare, this emergency adoption is necessary in order that the department may aid the implementation of this program by suspending regulations regarding the issuance of contracts and the requisite fees associated with such contracts.

Rule 1

The regulations described below are declared suspended and will not be enforced in connection with structural pest control work performed by members of the Louisiana Pest Control Association in connection with that association's "One Day to Make a Difference" program:

- a. the fee for termite contracts required under LAC 7:14113.M; and
- b. the requirements of LAC 7:14115 pertaining to contracts.

Rule 2

The regulations suspended by Rule 1 above are suspended only in connection with structural pest control work performed on buildings and structures at the following specific locations:

2930 West College, Shreveport, LA;
3619 Lakeland, Shreveport, LA;
4005 Theo Street, Shreveport, LA;
3511 Lillian Street, Shreveport, LA;
533 Dowling Street, Shreveport, LA;
3856 Harp Street, Shreveport, LA;
346 East 78th, Shreveport, LA;
907 North 31st Street, Baton Rouge, LA;
2641 Gracie Street, Baton Rouge, LA;
1506 Holly Street, Alexandria, LA;
2319 Olive Street, Alexandria, LA;
1806 Marye Street, Alexandria, LA.

The effective date of these rules is 12:01 o'clock a.m. June 12, 1995, and shall remain in effect until 12:01 o'clock a.m. July 12, 1995.

Bob Odom
Commissioner

9506#054

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 1706—Discipline

The State 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 May 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: Promulgated by the Board of Elementary and Secondary Education, LR 21:

Carole Wallin
Executive Director

9506#008

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 1706—Exceptional Children

The State Board of Elementary and Secondary Education has exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, the federally required changes to Bulletin 1706 submitted by the Department of Education on May 26,

1994. Readoption of the emergency rule is necessary in order to continue the federally required changes until they are finalized as a rule. The effective date of this emergency rule is July 1, 1995. It will remain in effect for 120 days or until finalized as a rule whichever occurs first.

Emergency adoption is necessary because the Office of Special Education Programs in the U.S. Department of Education has been assured that these regulations would be in effect and enforceable by July 1, 1994. This is required in order for the Louisiana State Plan for Special Education to be approved and Part B dollars to be released to Louisiana.

These amendments may be viewed in their entirety in the Office of the State Register, Capitol Annex, Room 512, 1051 North Third Street, Baton Rouge, LA; Office of Special Educational Services; State Department of Education; or in the Office of the State Board of Elementary and Secondary Education, located on the first floor of the Education Building in Baton Rouge, LA.

Carole Wallin
Executive Director

9506#003

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Bulletin 1706—Exceptional Children

The State Board of Elementary and Secondary Education exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B) and readopted as an emergency rule, Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act, except for an amendment to page 119, Part B.1.F.2 of the bulletin and amendments approved by the board on May 26, 1994. The revision to page 119 appeared on page 1285 of the October, 1993 issue of the *Louisiana Register* as an emergency rule and was adopted as a rule in February, 1994. Readoption of Bulletin 1706 is necessary in order to continue the present emergency rule until it is finalized as a rule.

Bulletin 1706 which was adopted as an emergency rule effective July 1, 1993 remains in effect, along with the newly adopted federal regulations. The effective date of this emergency rule is July 1, 1995. It will remain in effect for 120 days or until finalized as a rule, whichever occurs first.

The federally required amendments approved by the board on May 26, 1994 are also being advertised in this issue of the *Louisiana Register* as an emergency rule.

Bulletin 1706 contains statewide rules and regulations enforcing the requirements of state and federal laws which assure a free, appropriate public education to all exceptional children, ages 3 through 21 years. Responsibilities of state and local public and nonpublic educational agencies are given. Bulletin 1706 may be viewed in its entirety in the Office of the State Register, Capitol Annex, Room 512, 1051 North Third

Street, Baton Rouge, LA; in the Office of Special Educational Services, State Department of Education; and in the Office of the State Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge, LA.

Carole Wallin
Executive Director

9502#002

DECLARATION OF EMERGENCY

Board of Elementary and Secondary Education

Teacher Assessment Program (LAC 28:I.917)

The State Board of Elementary and Secondary Education exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and readopted as an emergency rule, the Louisiana Teacher Assessment Program, Policies and Procedures for Louisiana Teacher Assessment, which is part of the Louisiana Teacher Appraisal Instrument Panel Report (Panel IV).

Readoption as an emergency rule is necessary in order to continue the Louisiana Teacher Assessment Program which began with the 1994-95 school year and is mandated by the Louisiana Legislature, Third Extraordinary Session, 1994. The effective date of this emergency rule is June 20, 1995 for 120 days or until the final rule takes effect whichever occurs first. This document was previously advertised as an emergency rule and appeared on page 746 of the July, 1994 issue of the *Louisiana Register*.

This document may be viewed in its entirety in the Office of the State Register, Capitol Annex, Room 512, Baton Rouge, LA; in the Office of Research and Development, State Department of Education; or in the Office of the Board of Elementary and Secondary Education, located in the Education Building in Baton Rouge, Louisiana. The policies and procedures for Louisiana Teacher Assessment will be referenced in 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 §917. Personnel Evaluation Standards and Regulations

* * *

B. Teacher Assessment and Evaluation

* * *

2. Policies and Procedures for Louisiana Teacher Assessment (June, 1994) are adopted.

The Louisiana Teacher Assessment Program, which provides for the support and assessment of new teachers, was mandated by the Louisiana Legislature in the Third Extraordinary Session of 1994. The policies and procedures for the Louisiana Teacher Assessment are the guidelines by which a teacher teaching in Louisiana public schools for the

first time will be assessed. The policies and procedures set forth the philosophy and purposes of the Louisiana Teacher Assessment Program as well as the time frames for conducting the assessments.

AUTHORITY NOTE: R.S. 17:3881-3884, R.S. 17:3891-3896 and R.S. 17:3901-3904.

Carole Wallin
Executive Director

9506#004

DECLARATION OF EMERGENCY

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

Nitrogen Oxides Emission Control
(LAC 33:III.Chapter 22) (AQ115E)

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), Office of Air Quality and Radiation Protection, declares that an emergency action is necessary because of the requirements of the Clean Air Act Amendments (CAAA) of 1990 and the impact of the amendments upon the six-parish, ozone nonattainment area around Baton Rouge. It is necessary for the DEQ to adopt this emergency rule to LAC 33:III.Chapter 22, an existing rule, because the department has shown that compliance with the Chapter 22 NOx controls by that rule's deadline of May 31, 1995, as required at LAC 33:III:2203.N.1 and 2205.J.1, would increase ozone levels in the Baton Rouge ozone nonattainment area and, thus, pose an immediate danger to public health.

The immediate impact of this emergency repeal of the existing rule is to avoid NOx controls which would increase ozone levels in the Baton Rouge ozone nonattainment area pending the formal repeal of Chapter 22. This emergency repeal thus supports the permanent formal rescission of Chapter 22 through the normal regulatory process, which cannot be completed by the May 31, 1995 deadline for NOx controls in Chapter 22. This emergency repeal would also support the Department's request to the United States Environmental Protection Agency (EPA) for a permanent exemption under Section 182(f) of the 1990 CAAA from EPA requirements for NOx controls, which the Department has shown would increase ozone levels in the Baton Rouge ozone nonattainment area.

This emergency rule is effective on May 30, 1995, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first.

Title 33 ENVIRONMENTAL QUALITY Part III. Air

Chapter 22. Control of Emission of Nitrogen Oxides Repealed.

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 20:162 (February 1994), repealed LR 21:

Gustave A. Von Bodungen
Assistant Secretary

9506#009

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 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 has now 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 strengthen program oversight and to

control expenditures and thereby avoid a budget deficit for case management services. Therefore, the department has adopted the following emergency rule making these services subject to prior authorization in order for providers to receive Medicaid reimbursement. It is anticipated that implementation of this emergency rule will not impact expenditures for the one month remaining in SFY 1995 but will reduce expenditures for case management services for these groups by approximately \$1,200,000 for the state fiscal year 1996.

Emergency Rule

Effective June 1, 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.

Interested persons may submit written comments to the following address: 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 rule is available in the Medicaid parish offices for review by interested parties.

Rose V. Forrest
Secretary

9506#007

DECLARATION OF EMERGENCY

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

**Mental Health Rehabilitation Program for Adults with
Serious Mental Illness and Children with
Emotional/Behavioral Disorders**

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, 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 adopted on December 20, 1994 (*Louisiana Register* 1994 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 on September 20, 1994 (*Louisiana Register* Volume 9, Number 9).

The department has now determined that expenditures for mental health rehabilitation services for persons with serious mental illness have nearly doubled for state fiscal year 1995 over state fiscal year 1994. The department has also determined that the prior authorization of mental health rehabilitation services including the recipient's eligibility for services as a member of the seriously mentally ill population is necessary to avoid a budget deficit in the state 1996 fiscal year. Therefore, the department has adopted the following emergency rule making these services subject to prior authorization in order for providers to receive Medicaid reimbursement. It is anticipated that implementation of this emergency rule will reduce expenditures for mental health rehabilitation services by approximately \$10 million for the state fiscal year 1996.

Emergency Rule

Effective July 15, 1995, the Bureau of Health Services Financing adopts the following regulations governing the provider participation and Medicaid reimbursement of all mental health rehabilitation services. These regulations are applicable to all mental health rehabilitation services delivered under the State Plan. In order to be reimbursed by the Bureau of Health Services Financing under the Medicaid Program, the providers of mental health rehabilitation services must:

A. Obtain prior authorization from the Medicaid agency or its designee certifying candidates for mental health rehabilitation services who are Medicaid eligible and are members of the population of adults with serious mental illness or children with emotional/behavioral disorders as defined by the Office of Mental Health.

B. Obtain prior authorization of the mental health rehabilitation plan by the Medicaid agency or its designee.

C. Participate in provider training and technical assistance as required by the Medicaid agency or its designee.

D. Participate in the mental health rehabilitation

information system and provide up-to-date data including client data, service delivery information and assessment information to the Medicaid program or its designee on a weekly basis via electronic mail.

Interested persons may submit written comments to the following address: 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 rule is available in the Medicaid parish offices for review by interested parties.

Rose V. Forrest
Secretary

9506#055

DECLARATION OF EMERGENCY

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

Optional Targeted 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 allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

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, Number 6. This rule was subsequently revised on May 20, 1993 and published in the May 20, 1993 issue of the *Louisiana Register*, Volume 19, Number 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 the specific definition for each group as well as required changes in the provision of these services to all target groups including the mentally retarded/developmentally disabled and 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, Numbers 8 and 9 and have been maintained in force through subsequent emergency rulemaking. Adoption of these regulations were last published by reference in the April 20, 1995 issue of the *Louisiana Register* Volume 21, Number 4. Subsequently, the department determined that expenditures for case management services for the mentally retarded developmentally/disabled population

have 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 strengthen program oversight and to control expenditures and thereby avoid a budget deficit. Therefore, the department adopted the emergency rule of June 1, 1995 making these services for the mentally retarded/developmentally disabled or infants and toddlers with special needs subject to prior authorization. It is anticipated that implementation of the prior authorization requirement will reduce expenditures for case management services for this population by approximately \$1.2 million for the state fiscal year 1996. The department has now determined that the definition of the developmentally disabled population contained in the current regulations must be revised to ensure that case management services are provided only to appropriate persons and that necessary program reductions can be achieved to avoid a budget deficit. This revised definition adds the condition of autism and clarifies the concept of substantial functional limitation contained in the present regulations. Therefore the department has adopted the following emergency rule defining the population of developmentally disabled persons eligible for case management services under the Medicaid Program.

Emergency Rule

Effective June 9, 1995 the Bureau of Health Services Financing amends the definition of developmentally disabled persons who are eligible for case management services for the target group mentally retarded/developmentally disabled under the Medicaid Program.

DEVELOPMENTALLY DISABLED CHILDREN AGES THREE YEARS AND OLDER AND ADULTS

Developmentally disabled children ages three years and older and adults must meet the following definition of developmental disability:

a. a severe chronic disability of a person which is attributable to one of the conditions below:

(1) mental retardation, cerebral palsy, epilepsy, or autism; OR

(2) any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, or requires treatment or services similar to those required for these persons; AND

b. which is manifested before the person reaches age 22, AND

c. which is likely to continue indefinitely, AND

d. which results in substantial functional limitations in three or more of the following areas of major life activity. Substantial functional limitation means more than two standard deviations below the mean obtained by assessment with one or more standardized evaluation instruments which measure the following areas of major life activities.

(1) self-care,

(2) understanding and use of language,

(3) learning,

- (4) mobility,
- (5) self-direction,
- (6) capacity for independent living; AND

e. the recipient must require and is unable to access services from multiple formal or informal services providers, except in the instance of recipients eligible for waiver services; AND

f. the recipient is at risk of becoming homeless or in need of protection from harm due to environmental or life circumstances, need for supervision, or potential threat of abuse or neglect; OR

g. the recipient has been institutionalized, is at risk of becoming institutionalized or would otherwise require intermediate care facility for the mentally retarded (ICF/MR) level of care.

Interested persons may submit written comments to the following address: 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 rule is available in the Medicaid parish offices for review by interested parties.

Rose V. Forrest
Secretary

9506#056

DECLARATION OF EMERGENCY

Department of Social Services
Office of Family Support

Flood Insurance (LAC 67:III.4702)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following rule in the Individual and Family Grant Program (IFG) effective May 11, 1995. This rule shall remain in effect for a period of 120 days.

Pursuant to Public Law 103-325, the National Flood Insurance Reform Act of 1994, changes in regulations for the Individual and Family Grant Program were made at 44 CFR 206.131. As a condition of eligibility for assistance, applicants who reside in a flood zone were previously required to purchase and maintain flood insurance for a period of three years. Applicants will now be required to maintain the insurance for as long as they reside on the property. A notice of intent, was published in the May 1995 *Louisiana Register* to effect this revision; however, in accordance with APA regulations, the final rule will not be effective until September 1, 1995. Emergency rulemaking is therefore necessary because of the recently-declared federal disaster in the New Orleans area.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 10. Individual and Family Grant Program

Chapter 47. Application, Eligibility, and Furnishing Assistance

Subchapter C. Need and Amount of Assistance

§4702. Flood Insurance

A. In order to be eligible for assistance under the IFG Program, an individual or family residing on property located in a flood hazard zone and whose losses are the result of flooding must agree to purchase adequate flood insurance and maintain such insurance for as long as they live in the home. This maintenance provision also applies to individuals who buy, or otherwise have transferred to them, any real estate for which flood insurance maintenance has been required.

* * *

AUTHORITY NOTE: Promulgated in accordance with 44 CFR 206.131 and P.L. 93-288.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Eligibility Determinations, LR 15:444 (June 1989), LR 15:744 (September 1989), amended by the Department of Social Services, Office of Family Support, LR 17:474 (May 1991), LR 17:766 (August 1991), LR 17:888 (September 1991), LR 18:939 (September 1992), LR 18:1351 (December 1992), LR 19:167 (February 1993), LR 19:213 (February 1993), LR 19:606 (May 1993), LR 19:784 (June 1993), LR 20:449 (April 1994), LR 21:403 (April 1995), LR 21:

Gloria Bryant-Banks
Secretary

9506#006

DECLARATION OF EMERGENCY

Department of Treasury
Board of Trustees of the State Employees
Group Benefits Program

Outpatient Prescription Drugs

In accordance with the applicable provisions of R.S. 49:953(B), the Administrative Procedure Act and R.S. 42:871(C) and 874(A)(2), vesting the board of trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the board of trustees hereby finds that imminent peril to the public health and welfare exists which requires amendments to the Plan Document by emergency rule in order to avoid disruption or curtailment of services to state employees and their dependents who are covered by the State Employees Group Benefits Program.

The purpose, intent, and effect of these amendments are to remove the pre-existing condition limitations and coordination of benefits provisions from application to claims for outpatient prescription drugs.

Effective July 1, 1995, the Plan Document of Benefits for the State Employees Group Benefits Program is amended in the following particulars:

Amendment Number One

Article 1, Section II, Subsection D is amended to redesignate paragraph 4 as paragraph 5, and to add a new paragraph, designated as paragraph 4, to read as follows:

4. Eligible outpatient prescription drug claims shall not be subject to any pre-existing condition limitations.

Amendment Number Two

Article 3, Section IX, Subsection B, Paragraph 2 is amended to read as follows:

B. All benefits provided under Article 3, Comprehensive Medical Benefits, except for outpatient prescription drug claims, are subject to coordination of benefits.

This emergency rule shall remain in effect for a maximum of 120 days or until the final rule is promulgated, whichever occurs first.

James R. Plaisance
Executive Director

9506#033

RULES

RULE

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Horticulture Commission

Requirements for Licensees (LAC 7:XXIX.15115)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Horticulture Commission, has amended the rules and regulations regarding the requirements for licensees. These rules comply with and are enabled by R.S. 33801 et seq. No preamble regarding these rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticulture Commission

Chapter 151. Horticulture Commission

§15115. General Requirements for all Licensees or Permittees

* * *

E. Licensees must display at least one of their license numbers on both sides of all vehicles that have advertisement or signs and are used for business purposes with lettering at least 2 inches high and legible at the distance of 25 feet. The number to be displayed shall be the last four digits of the license number preceded by two letters indicating the type of license as follows:

AR - Arborist

LA - Landscape Architect

RF - Retail Florist

HS - Horticulturist

LC - Landscape Contractor

WF - Wholesale Florist

UA - Utility Arborist

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801 and R.S. 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:7 (January 1988), LR 21: (June 1995).

Bob Odom
Commissioner

9506#019

RULE

Department of Economic Development Board of Examiners of Certified Shorthand Reporters

Transcript Format (LAC 46:XXI.1101)

Under authority of R.S. 37:2551 and with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners of Certified Shorthand Reporters amends LAC 46:XXI.1101. This rule establishes a uniform format to be used by freelance reporters when preparing transcripts.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 11. Court Reporting Procedures

§1101. Transcript Format Guidelines (Freelance Reporters)

Every freelance certified court reporter shall be required to use the following transcript format rules on every transcript prepared by that reporter:

1. Transcripts shall contain no fewer than 25 typed lines, exclusive of the page number and footers, on standard 8½ inches X 11 inches paper.

2. Transcripts shall contain no fewer than nine characters to the typed inch.

3. The left-hand margin of transcripts shall be set at no more than 1 3/4 inches.

4. The right-hand margin of transcripts shall be set at no more than 3/8 of an inch.

5. Each question and answer shall begin on a separate line.

6. Each question and answer shall begin at the left-hand margin, with no more than five spaces from the question and answer to the text.

7. Carryover question and answer lines shall begin at the left-hand margin.

8. Colloquy material shall begin no more than 15 spaces from the left-hand margin, with carryover lines commencing no more than 10 spaces from left-hand margin.

9. Quoted material shall begin no more than 15 spaces from the left-hand margin, with carryover lines commencing no more than 10 spaces from the left-hand margin.

10. Parentheticals and exhibit markings shall begin no more than 15 spaces from the left-hand margin, with carryover lines commencing no more than 15 spaces from the left-hand margin.

11. There shall be no numbered lines that are blank on a transcript page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2551.

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

Gay M. Pilié
Executive Director

9506#023

RULE

Board of Elementary and Secondary Education

Acceptable Work Experience for Teacher Pay (LAC 28:I.1710)

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 definition of acceptable work experience for teacher pay. This policy will be included in the Administrative Code, Title 28 as stated below:

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 17. Finance and Property

§1710. Acceptable Work Experience for Teacher Pay

A. Conditions of Employment. For purposes of determining salary, Louisiana public schools shall grant credit for work experience in compliance with the following criteria:

1. Louisiana Public Schools

a. Full-time/half-time satisfactory teaching experience at a parish or city school board or a Louisiana special school. Experience in a position that requires a valid Louisiana teaching/ancillary certificate. Proper certification for the position held; this is to include temporary certificate, temporary teaching assignment, temporary employment permit, emergency permit, provisional certificate, and/or Circular 665 experience after regular certificate/licensure is secured.

b. Full-time college/university satisfactory teaching experience, not to include graduate assistantship.

c. Vocational technical institute teaching/instructional, full-time satisfactory experience when certified as a teacher for public elementary or secondary schools or vocational technical institutes; proper temporary certification will count.

d. Full-time satisfactory work experience acquired by ancillary personnel while employed by an organization or institution if such personnel held the credentials required for ancillary certification at the time work was performed. This is not to include private practice.

2. Louisiana Nonpublic Approved Schools. The crediting of elementary and secondary teaching/instructional experience for Louisiana nonpublic teachers/instructional employees, shall be in accordance with R.S. 17:424.2. Full-time college/university, vocational technical, and ancillary experience shall be credited according to the standards stated in A.1.b-d above. Experience must have been in a position requiring teaching/ancillary certificate or licensure. Proper temporary certification will count after regular certificate/licensure is secured.

3. Out-of-State Public Schools. The crediting of public elementary and secondary teaching/instructional experience for out-of-state teachers/instructional employees shall be in accordance with R.S. 17:424.3. Full-time college/university, vocational technical and ancillary experience shall be credited according to the standards stated in A.1.b-d above. Experience must have been in a position requiring teaching/ancillary certificate or licensure; this does not include experience under temporary certification/licensure.

4. Out-of-State Nonpublic Approved Schools. The crediting of elementary and secondary teaching/instructional experience for out-of-state nonpublic teachers/instructional employees is optional and shall be determined by each local school board.

5. Military. Credit for military service shall be in accordance with R.S. 17:423.

B. Length of Employment. A school system may credit a full year of teaching/instructional service if the employee has provided teaching/instructional service for a minimum of 90 school days or one semester in one school year, in compliance with the above requirements. This credit will be given in the following year of employment except for individuals hired at mid-term who may be given credit for the fall semester of experience. The maximum credit for a school year is one year of experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:424.2.

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

This policy will not affect years of credit granted to individuals prior to its adoption by the board.

Carole Wallin
Executive Director

9506#030

RULE

Board of Elementary and Secondary Education

Advisory Council Attendance Policy (LAC 28:I.105)

In accordance with the R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education adopted BESE's Advisory Council Attendance Policy. This policy stated below is an amendment to the LAC 28:I. Chapter 1.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 1. Organization

§105. Board Advisory Councils

A. - H. ...

I. Attendance Policy

1. Letters of notification to council members regarding meetings should state that a proxy shall be sent if the appointed member is unable to attend the meeting.

2. Appointed members are expected to attend all scheduled meetings of an advisory body. Unless otherwise provided, if a member is unable to attend a meeting because of a justifiable reason, a request for an excused absence may be submitted to the council chairman and a nonvoting proxy may be named by the appointed member to serve for a total of three meetings. Any appointed member who misses three consecutive meetings without an approved excuse by the chairman shall be automatically terminated, and the appointing authority shall be asked to name a replacement to complete the unexpired term.

3. When it is known that a quorum is unlikely, the council chairman shall be so notified and the meeting will be canceled if the chairman so decides. If a majority of members are not present and a council meets, minutes of the meeting shall state that a quorum was not present.

4. The appointing authority for each member shall be notified immediately following each scheduled meeting indicating nonattendance of the appointee. The form should include:

- a. name of the council member;
- b. date of the meeting;
- c. BESE policy on attendance.

* * *

AUTHORITY NOTE: Promulgated in accordance with Louisiana Constitution Article VII, Section 10.1; R.S. 17:6(9); R.S. 17:11; R.S. 17:24.4; R.S. 17:415.1; R.S. 17:1954; R.S. 17:3762; R.S. 17:3801; R.S. 42:4.1-12; 20 USC 1413 (Sec. 613) and 20 USC 3474 (Sec.112).

HISTORICAL NOTE: Promulgated LR 21: (June 1995).

Carole Wallin
Executive Director

9506#032

RULE

Board of Elementary and Secondary Education

Bulletin 1706—Discipline

The State Board of Elementary and Secondary Education adopted Section 459 of Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act.

Section 459. Discipline Procedures

A. Definitions

1. *In-School Alternative Discipline Program*—a detention program which includes educational services as written on the IEP. Removal of a student from his/her class into this program shall not be considered an exclusion.

2. *Significant Change in Placement*—removal from educational services for more than nine consecutive days within one school year.

NOTE: If a series of exclusions that are each of nine days or fewer in duration creates a pattern that also constitutes a significant change in placement. Among the factors that should be considered in this determination are the length of each removal, the proximity of the removals to one another, and the total amount of time the student is excluded from school.

3. *Student with Suspected Disabilities*—pupil appraisal personnel has received formal written consent from the parent to evaluate.

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

1. For exclusions of one to nine days:

a. the student must be given prior oral or written notice of the charges as well as the basis for such accusation and an opportunity to respond. The school principal or designee should contact the parent, tutor, or legal guardian to establish a course of action to identify and correct the behavior leading to exclusion before any further action is taken to remove the student. All procedural safeguards afforded regular education students regarding suspension must be extended to students with disabilities and their parents; (See Bulletin 741, *The School Administrator Handbook* and LSA-R.S. 17:416)

b. the special education administrator or designee shall be notified immediately, within one school day, of the student's removal from school, the number of days of

exclusion, and the reason for the removal. All exclusions, regardless of the reason, must be reported.

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

NOTE: The "stay-put" provision mandates a student with disabilities shall remain in his/her current educational placement pending completion of any review proceedings, unless the parents and LEA otherwise agree.

a. a trained and knowledgeable group of persons must determine whether the student's misconduct or pattern of misconduct is related to the disabling condition. This group of persons must be knowledgeable about the student, the meaning of the evaluation data, and the placement options. The IEP/Placement Committee could satisfy this requirement;

NOTE: For the purpose of this section, if the IEP/Placement Committee is used, the procedure used to notify parents (whether oral or written or both) is left to the discretion of the LEA, but the LEA must keep a record of its efforts to contact parents.

b. the data considered in making the relatedness decision includes information drawn from a variety of sources, including the IEP and evaluation reports. Other sources may include aptitude and achievement tests, teacher recommendation, physical condition, social or cultural background, and adaptive behavior. The information obtained from all such sources must be documented and carefully considered;

c. the relatedness decision cannot be based on the LEA's normal disciplinary procedures. The person, such as the principal, who recommended the exclusion of the student cannot serve on the relatedness decision committee for that student;

d. if the misconduct is found not related to the disability and the exclusion will occur, a reevaluation (as defined in Bulletin 1508, *The Pupil Appraisal Handbook*) must be conducted. After the reevaluation is completed the IEP/Placement Committee must convene to determine appropriate programming and placement and develop a behavior management plan which addresses the specific behavior(s) which caused the exclusion to occur. Free appropriate public education (FAPE) must be provided and educational services may not cease;

e. if the misconduct is found related to the disability, the exclusion shall not occur. The system must convene an IEP committee to consider modifications to the student's program (e.g., additional related services, counseling, changes in the behavior management plan, increased time in Special Education, change of class schedule, change of teacher);

f. the Special Education administrator or designee shall be notified immediately, within one school day, of the recommendation for an exclusion of more than nine days. All exclusions, regardless of the reason, must be reported.

3. Exclusion from the bus is treated the same as an exclusion from school unless alternative means of transportation are provided.

4. The exclusion clock of one to nine days begins anew following a move down the placement continuum to a more

restrictive environment after following the appropriate procedures.

5. Where the student is clearly dangerous to himself or others, the student may be removed immediately. In no case can this removal last longer than nine school days after the immediate exclusion. During this nine-day period, school officials may initiate a review of the student's IEP, seek to persuade the parents to agree to an interim placement, or invoke the aid of the courts to remove the allegedly dangerous student from school if they believe that maintaining the student in the current placement would be substantially likely to result in injury to the student or others. Notice of the charges and other due process procedures may be delayed but must be carried out as soon as practical.

NOTE: At each IEP meeting there must be a discussion of the social/behavioral needs of the student. This should include the following:

1. addressing any behavioral problem(s) of the student that are related to the disabling condition;
2. developing a structured program of behavior management (including goals and objectives) for dealing with the behavior; and
3. a review and determination of the effectiveness of any prior plan of behavior management.

This revised Section 459 (Discipline) of Bulletin 1706 supersedes the Discipline Policy of Section 459 which was adopted by the board on January 26, 1995 and advertised as a notice of intent in the March, 1995 issue of the *Louisiana Register* and as an emergency rule in the February, 1995 and May, 1995 issues of the *Louisiana Register*. An amendment to B.2 of the notice of intent (March, 1995) and emergency rules printed in the February and May, 1995 issues of the *Louisiana Register* is being advertised in this issue as an emergency rule.

AUTHORITY NOTE: R.S. 17:1941-1958.

HISTORICAL NOTE: LR 21: (June 1995).

Carole Wallin
Executive Director

9506#031

RULE

Board of Elementary and Secondary Education

Bulletin 1794—Textbooks and Library Books (LAC 28:I.919)

In accordance with the R.S. 49:950 et. seq., the Administrative Procedure Act, Board of Elementary and Secondary Education adopted for one year, Bulletin 1794, Textbook and Library Book Policy and Procedure Manual, Revised 1994.

Bulletin 1794 is referenced in the Administrative Code as noted below.

Title 28
EDUCATION

Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations and State Plans
§919. Textbook Adoption Standards and Procedures

A. Bulletin 1794 (Revised 1994)

Bulletin 1794 (Revised 1994), Textbook and Library Book Policy and Procedure Manual, is adopted. The bulletin contains procedures and guidelines for the adoption of state approved textbooks and reference materials. The procedures include the appointment and functions of State Ad Hoc Adoption Committee and timelines for the preliminary adoption activities such as the placement of texts in public libraries. Provisions are made for public review and appeals. Included in the bulletin are the functions of the state board in the adoption process, including the activities of its Textbook and Media Advisory Council and its Textbook and Media Committee. The state's adoption cycle is in the bulletin.

* * *

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

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

Bulletin 1794 may be viewed in its entirety in the Office of the State Register, 1050 North Third Street, Capitol Annex Suite 512, Baton Rouge, LA, in the State Department of Education, Office of Educational Support Programs, or in the office of the State Board of Elementary and Secondary Education located in the Education Building in Baton Rouge, LA.

Carole Wallin
Executive Director

9506#025

RULE

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

Gasoline Bulk Plants (LAC 33:III.2133) (AQ111)

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.2133, (AQ111).

The rule change will exempt a bulk plant that dispenses less than 4,000 gallons of gasoline daily from installing gasoline vapor recovery equipment in Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge Parishes.

This regulation has amended the existing regulation (LAC 33:III.2133) to conform with the Model VOC Rules for Reasonably Available Control Technology published by EPA in June, 1992 pursuant to Title I of the Clean Air Act.

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 F. Gasoline Handling
§2133. Gasoline Bulk Plants

A. Applicability

1. This Section applies to all unloading, loading, and storage operations at bulk gasoline plants and to any gasoline tank truck delivering or receiving gasoline at a bulk gasoline plant.

2. The following are subject only to the requirements of Subsections C.3.g-i, E, and E.1 of this Section and are exempt from the requirements of LAC 33:III.2131:

a. any stationary storage tank of 550 gallons (2,082 liters) capacity or less, notwithstanding LAC 33:III.2107; and

b. any bulk gasoline plant with an average daily throughput of gasoline of less than 4,000 gallons (15,000 liters) on a 30-day rolling average, provided that records are maintained according to the requirements in Subsection E.1 of this Section. Any facility that becomes or is currently subject to all of the provisions of this Section by exceeding this applicability threshold will remain subject to these provisions even if its throughput later falls below the applicability threshold. Any facility that is currently subject to a state or federal rule promulgated pursuant to the Clean Air Act Amendments of 1977 by exceeding an applicability threshold is and will remain subject to these provisions, even if its throughput or emissions have fallen or later fall below the applicability threshold.

B. Definitions. As used in this Section, all terms not defined herein shall have the meaning given to them in the Act or in LAC 33:III.111.

C. Standards

1. Each bulk gasoline plant subject to this Section shall be equipped with a vapor balance system between the gasoline storage tank and the incoming gasoline tank truck designed to capture and transfer vapors displaced during filling of the gasoline storage tank. These lines shall be equipped with fittings that are vapor-tight and that automatically and immediately close upon disconnection.

2. Each bulk gasoline plant subject to this Section shall be equipped with a vapor balance system between the gasoline storage tank and the outgoing gasoline tank truck designed to capture and transfer vapors displaced during the loading of the gasoline tank truck. The vapor balance system shall be designed to prevent any vapors collected at one loading rack from passing to another loading rack.

3. Each owner or operator of a bulk gasoline plant subject to this Section shall act to ensure that the procedures in Subsection C.3.a-i of this Section are followed during all

loading, unloading, and storage operations:

a. the vapor balance system required by Subsection C.1 and 2 of this Section shall be connected between the tank truck and storage tank during all gasoline transfer operations;

b. all storage tank openings, including inspection hatches and gauging and sampling devices, shall be vapor-tight when not in use;

c. the gasoline tank truck compartment hatch covers shall not be opened during product transfer;

d. all vapor balance systems shall be designed and operated at all times to prevent gauge pressure in the gasoline tank truck from exceeding 18 inches (450 millimeters) of water and vacuum from exceeding 5.9 inches (150 millimeters) of water during product transfers;

e. no pressure vacuum relief valve in the bulk gasoline plant vapor balance system shall begin to open at a system pressure of less than 18 inches (450 millimeters) of water or at a vacuum of less than 5.9 inches (150 millimeters) of water;

f. all product transfers involving gasoline tank trucks at bulk gasoline plants subject to this Section shall be limited to vapor-tight gasoline tank trucks;

g. filling of storage tanks shall be restricted to submerged fill;

h. loading of outgoing gasoline tank trucks shall be limited to submerged fill; and

i. owners or operators of bulk gasoline plants or owners or operators of tank trucks shall observe all parts of the transfer and shall discontinue transfer if any liquid leaks are observed or vapor leaks are observed from lines, hoses, or connectors.

4. Each calendar month, the vapor balance systems described in Subsection C.1 and 2 of this Section and each loading rack that loads gasoline tank trucks shall be inspected for liquid or vapor leaks during product transfer operations. For purposes of this Section, detection methods incorporating sight, sound, or smell are acceptable. Each leak that is detected shall be repaired within 15 calendar days after it is detected.

D. Compliance. Compliance with this Section shall be determined by applying the following test methods, as appropriate:

1. Leak tests for monitoring during loading, EPA, Appendix B, Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA 450/2-78-51);

2. Test Method 21 (LAC 33:III.6077) for determination of Volatile Organic Compound Leaks;

3. Monitoring Requirements. Inspection for visible liquid leaks, visible fumes, or odors resulting from gasoline dispensing operations shall be conducted by the owner or the operator of the bulk plant or the owner or the operator of the tank truck. Gasoline loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

E. Recordkeeping. The owner/operator of any gasoline bulk plant shall maintain records to verify compliance with or exemption from this Section. The records will be maintained

for at least five years and will include, but not be limited to, the following:

1. purchase and sales receipts including delivery dates, quantities, and comments;

2. equipment operation schedules and maintenance records;

3. data to document compliance with LAC 33:III.2133.D;

4. visual inspection to address the installation of the vapor return line, odor testing for leaks during transfer operations and suggested use of check-off sheets; and

5. the dates and times the vapor collection facility was inspected and whether it passed the requirements specified in LAC 33:III.2137.B.1.

F. Reporting. The owner or operator of any facility containing sources subject to this Section shall comply with the requirements of LAC 33:III.927 for the reporting of excess emissions.

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), LR 16:610 (July 1990), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21: (June 1995).

James B. Thompson, III
Assistant Secretary

9506#045

RULE

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

Incident Reporting Requirements (LAC 33:XV.341, 550, 777, 2051)(NE17)

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 Radiation Protection Division regulations, LAC 33:XV.Chapter 3, 5, 7 and 20 (NE17).

The rule changes to Chapters 3, 5, 7 and 20 would formally require reporting to this agency certain incidents involving radioactive materials. In the past, these incidents would probably have been reported because of other reporting requirements, however the NRC recently decided to clarify the reporting requirements. The reporting requirement changes are required by the NRC for Louisiana to remain as an agreement state.

Title 33

ENVIRONMENTAL QUALITY

Part XV. Radiation Protection

Chapter 3. Licensing of Radioactive Material

§341. Reporting Requirements for General and Specific Licenses

A. Immediate Report. Each licensee shall notify the division as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

B. Twenty-four Hour Report. Each licensee shall notify the division within 24 hours after the discovery of any of the following events involving licensed material:

1. an unplanned contamination event that:

a. requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

b. involves a quantity of material greater than five times the lowest annual limit on intake specified in LAC 33:XV.Chapter 4, Appendix B, for the material; and

c. requires access to the area to be restricted for a reason other than to allow isotopes with a half-life of less than 24 hours to decay prior to decontamination;

2. an event in which equipment is disabled or fails to function as designed when:

a. the equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

b. the equipment is required to be available and operable when it is disabled or fails to function; and

c. no redundant equipment is available and operable to perform the required safety function;

3. an event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body; or

4. an unplanned fire or explosion damaging any licensed material or any device, container, or equipment containing licensed material when:

a. the quantity of material involved is greater than five times the lowest annual limit on intake specified in LAC 33:XV.Chapter 4, Appendix B, for the material; and

b. the damage affects the integrity of the licensed material or its container.

C. Preparation and Submission of Reports. Reports made by licensees in response to the requirements of LAC 33:XV.341 must be made as follows:

1. licensees shall make reports required by LAC 33:XV.341.A and B by telephone to the division. To the extent that the information is available at the time of notification, the information provided in these reports must include:

a. the caller's name and call-back telephone number;
b. a description of the event, including date and time;
c. the exact location of the event;
d. the isotopes, quantities, and chemical and physical form of the licensed material involved; and

e. any personnel radiation exposure data available; and

2. each licensee who makes a report required by LAC 33:XV.341.A or B shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the division. The reports must include the following:

a. a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

b. the exact location of the event;

c. the isotopes, quantities, and chemical and physical form of the licensed material involved;

d. date and time of the event;

e. corrective actions taken or planned and the results of any evaluations or assessments; and

f. the extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

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 21: (June 1995).

Chapter 5. Radiation Safety Requirements For Industrial Radiographic Operations

§550. Performance Requirements for Radiography Equipment

Equipment serviced, maintained, or repaired by a licensee or registrant or used in industrial operations must meet the following minimum criteria:

* * *

[See Prior Text in 1 - 3.i]

j. malfunction of any exposure device or associated equipment shall be reported to the division in accordance with the requirements of LAC 33:XV.341;

* * *

[See Prior Text in 4 - 5]

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 20:653 (June 1994), amended LR 21: (June 1995).

Chapter 7. Use of Radionuclides in the Healing Arts

§777. Quality Management Program

* * *

[See Prior Text in A - A.5]

B. The licensee shall:

1. develop procedures for and conduct a review of the quality management program including, since the last review,

an evaluation of:

- a. a representative sample of patient administrations;
- b. all recordable events;
- c. all misadministrations to verify compliance with all aspects of the quality management program; these reviews shall be conducted at intervals no greater than 12 months.

* * *

[See Prior Text in B.2 - H]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21: (June 1995).

Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

Subchapter D. Notification

§2051. Notification of Incidents, Abandonment, and Lost Sources

A. The licensee shall immediately notify the division by telephone and subsequently within 30 days by confirmatory letter if the licensee knows or has reason to believe that a sealed source has been ruptured. The letter must designate the well or other location, describe the magnitude and extent of the release of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

* * *

[See Prior Text in B - D.2.h]

E. The licensee shall notify the division of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation or radioactive materials, and certain other accidents as required by LAC 33:XV.341, 485, 486, and 487.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21: (June 1995).

James B. Thompson, III
Assistant Secretary

9506#043

RULE

Department of Environmental Quality Office of the Secretary

Adjudications (LAC 33:I.Chapter 3)(OS16)

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 Office of the Secretary regulations, LAC 33:I.Chapter 3, (OS16).

The rules establish practical and easy-to-follow procedures for regulating adjudications before the department, from the time a hearing request is filed through final administrative disposition. The rules will repeal all provisions governing adjudications in the Environmental Control Commission Rules of Procedure (August, 1980). Specific topics include: delegation of authority; requests for adjudicatory hearings; ex parte communication and recusal; intervention; filing of pleadings, documents, and other items; prehearing procedures; discovery; evidence; subpoenas; interlocutory review; and review by the secretary of decisions by a presiding officer.

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

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 3. Adjudications

§301. Purpose

This Chapter establishes procedures for regulating adjudications when a request for an adjudicatory hearing has been granted or an adjudicatory hearing has otherwise been scheduled by the administrative authority. All adjudications shall be governed by the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., the Administrative Procedure Act, R.S. 49:950, et seq., and this Chapter. This Chapter also establishes procedures for related matters such as, but not limited to appeals and denials of requests for hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§303. Definitions

The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular section:

Adjudication—the agency process for the formulation of a final decision or order when a request for an adjudicatory hearing has been granted or an adjudicatory hearing has otherwise been scheduled by the administrative authority.

Adjudicatory Record—all pleadings, documents, correspondence and other items filed with the administrative hearings clerk in connection with an adjudication, including those items specified in R.S. 49:955(E).

Administrative Authority—the secretary of the Department of Environmental Quality, or his or her designee.

Administrative Hearings Clerk—the person who, directly or through his/her designee(s), maintains custody of and receives filings to the adjudicatory record or the record on appeal following final agency action.

Administrative Record—any and all documents, testimony, records, files, or materials submitted to the administrative authority or compiled by the administrative authority concerning an adjudication or upon which a decision or order is based.

Aggrieved Person—a person who has a real and actual

interest that is or might be adversely affected by a final action of the department under the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.

Applicant—a person formally seeking a permit action.

Assistant Secretary—the assistant secretary of any office of the department.

Department—the Louisiana Department of Environmental Quality.

Interlocutory Decision, Order, or Ruling—one that determines only preliminary matters in the course of an adjudication, and does not determine the merits of the adjudication.

Party—the state (through the Department of Environmental Quality), a respondent, applicant, permittee, intervenor, or other person who is formally participating in an adjudication before the department.

Permittee—a person to whom the department has issued a permit.

Person—any individual, municipality, public or private corporation, partnership, firm, the United States government and any agent or subdivision thereof, or any other juridical person, which shall include, but not be limited to, trusts, joint stock companies, associations, the State of Louisiana, political subdivisions of the State of Louisiana, commissions, and interstate bodies.

Pleading—a petition, motion, response, request, or any statement of position filed with the administrative hearings clerk in connection with an adjudication or appeal of a final agency decision or order.

Presiding Officer—the secretary, an assistant secretary, an administrative law judge, or a hearing officer.

Respondent—a person to whom an enforcement action is directed.

Secretary—the secretary of the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§305. Rescission

The following portions of the Rules of Procedure of the Louisiana Environmental Control Commission dated July 22, 1980, and effective August 20, 1980, are hereby rescinded:

1. Sections 5.0 through 5.8;
2. Sections 6.0 through 6.5;
3. Section 7.0; and
4. Sections 8.0 through 8.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§307. Severability

If any provision of these rules and regulations, or the application thereof, is held to be invalid, the remaining provisions of these rules and regulations shall not be affected, so long as they can be given effect without the invalid

provision. To this end, the provisions of these rules and regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§309. Conflicts

Except as otherwise required by statutory law, this Chapter shall exclusively govern procedures used in adjudications. This Chapter supersedes all rules in conflict herewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§311. Hearing Officers: Delegation of Authority

A. Unless otherwise directed by the secretary in writing, when hearing officers hired pursuant to R.S. 30:2018 are assigned a matter, they are hereby delegated the authority to perform the functions of the presiding officer and hearing officer as set forth in this Chapter, the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq. Except as provided in Subsection B of this Section, hearing officers are authorized to conduct hearings, issue interlocutory rulings, make findings of fact and conclusions of law, and render decisions on the merits.

B. In permit actions the hearing officers are authorized to conduct hearings, issue interlocutory rulings, and make findings of fact, conclusions of law, and recommendations on the merits for submission to the administrative authority for a decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§313. Presiding Officer: Regulating Adjudications

A. The presiding officer shall have the authority to regulate the course of the proceedings and maintain order.

B. If any party fails to file briefs, memoranda, pleadings, or other documents as required; fails to appear at or participate in any conference, hearing, or other proceeding; fails to comply with the rules of this Chapter; or fails to comply with an order of the presiding officer, the presiding officer may take such appropriate measures in response to the party's action or omission as are necessary to maintain order and regulate the course of the proceedings, including but not limited to such measures as are specifically provided elsewhere in this Chapter.

C. The time and place for adjudicatory proceedings shall be fixed by the presiding officer and reasonable notice thereof shall be provided to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§315. Administrative Hearings Clerk

A. The administrative authority shall designate a person to serve as the administrative hearings clerk who shall be the official custodian of adjudicatory records. The clerk shall maintain the adjudicatory records separately from other records of the department.

B. The administrative hearings clerk, or his/her designee, is authorized to:

1. certify copies of official documents in his/her custody;
2. ensure distribution of all decisions, recommendations, orders, subpoenas, and notices issued by the presiding officer or secretary; and
3. perform other duties as assigned by the administrative authority and the Administrative Hearings Division administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§317. Requests for Adjudicatory Hearings

A. Requests for Adjudicatory Hearings Pursuant to R.S. 30:2024(A)

1. An applicant or respondent may request an adjudicatory hearing on a permit or enforcement action under R.S. 30:2024(A) by filing the request with the administrative hearings clerk within the time period allowed by R.S. 30:2024(A).

a. Failure to file a hearing request timely shall result in summary dismissal of the request.

b. Failure to file a hearing request directly with the administrative hearings clerk shall not invalidate the filing, provided the item is filed timely with the administrative authority.

2. A request for an adjudicatory hearing shall specify the provisions of the order, penalty assessment, or other action on which the hearing is requested, and briefly describe the basis for the request.

3. Upon timely filing of the request, the administrative authority shall either grant or deny the request within 30 days.

B. Requests for Adjudicatory Hearings by Aggrieved Persons

1. An aggrieved person may request an adjudicatory hearing by filing a written request with the administrative hearings clerk before the action becomes final. Failure to file a hearing request directly with the administrative hearings clerk shall not invalidate the filing, provided the item is filed timely with the administrative authority. A copy of the request shall be served upon the assistant secretary of legal affairs and enforcement and on any applicant, permittee and respondent involved in the matter.

2. The aggrieved person shall state in the request all facts necessary to demonstrate that he is or might be aggrieved by the action and that a hearing should be granted.

3. Upon receipt of notice that a request for hearing under this Subsection has been filed, the department and any applicant or respondent involved in the action shall file their response within the time fixed by the administrative authority.

4. The aggrieved person may apply for a stay of the action pending the decision to grant or deny the request for hearing. The stay shall be granted or denied in the discretion of the administrative authority.

5. The administrative authority shall grant or deny the request for hearing in writing within 30 days after the request is filed, unless it determines that additional time is necessary. If the request is denied, written reasons shall be given for the denial.

6. Except for good cause shown, this Subsection shall not apply to an aggrieved person who intervened or had the right to intervene in an evidentiary hearing held pursuant to LAC 33:V.709.

C. Adjudicatory Hearings Initiated by the Administrative Authority

1. The administrative authority shall hold an adjudicatory hearing when required by regulations of the department or by law.

2. The administrative authority may hold an adjudicatory hearing upon its own motion where required by equity and justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§319. Docket Number

A. At the time a request for hearing is filed, it shall be assigned a docket number by the administrative hearings clerk. The docket number shall be used on all subsequent pleadings filed in the case. The fact that a request for hearing is docketed does not constitute a determination as to whether the request is granted nor as to its sufficiency or validity.

B. Any amendment or supplement of an agency action on which a request for hearing has been granted becomes a part of the original action, and a new request for hearing is unnecessary. The amendment or supplement shall bear the same docket number as the original action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§321. Parties

A. Parties in adjudications may include:

1. the department;
2. the respondent, applicant, or permittee; and
3. an intervenor or other aggrieved person.

B. Parties shall have the right to retain counsel to represent them but shall not be required to do so. Any retained counsel not licensed to practice in Louisiana shall comply with the provisions of R.S. 37:214. No counsel of record may withdraw without leave of the presiding officer, upon motion and order. Leave to withdraw shall not be withheld unreasonably.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of

§323. Intervention

A. An aggrieved person has the right to intervene as a party in an adjudicatory hearing, provided the proper petition for intervention is filed at least 15 days prior to the adjudicatory hearing and such intervention is not likely to create an undue broadening of the issues or otherwise unduly impede the resolution of the matter.

B. If more than one person or entity with the same or similar interests seeks to intervene, the presiding officer may require them to designate a representative to participate on their behalf. If, during the course of an adjudication, the interest of an intervenor diverges from that of the designated representative, the presiding officer may allow that intervenor to participate through a separate representative.

C. A petition for intervention shall comply with the requirements of LAC 33:I.331 and shall also state all facts necessary to demonstrate that the petitioner is an aggrieved person.

D. Upon good cause shown and with permission of the presiding officer, persons with timely and properly pending petitions for intervention may be considered parties for the limited purposes of discovery, exchanges of information, prehearing conferences, service of pleadings, and other such purposes as allowed by the presiding officer, provided no prejudice is shown to existing parties.

E. Unless otherwise ordered by the presiding officer, opposition by parties to a petition for intervention must be filed with the administrative hearings clerk within 10 days after service on the parties of the petition and shall be served on the petitioner and all parties in accordance with these rules.

F. In those cases where any conference or preliminary hearing was held prior to the intervenor's petition, the presiding officer shall require that the intervenor be bound by any previously issued orders or schedules unless the intervenor can show good cause for modification of such orders or schedules or the presiding officer determines that justice requires modification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§325. Consolidation

When two or more adjudications involving a common issue or issues of law or fact are separately pending before the department, the presiding officer, upon his own motion or that of any party, at any time prior to the adjudicatory hearing, may order the consolidation of the matters or may order a joint hearing on any of the common issues. If the matters are pending before two or more presiding officers, the approval of each presiding officer is required. The matter with the higher docket number shall be transferred to the presiding officer to whom the matter with the lower docket number was assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§327. Separation of Actions

Upon his own motion or that of any party, the presiding officer may separate actions which were cumulated or consolidated if he finds that separation would simplify the proceedings, would permit a more orderly disposition of the matter, or would otherwise be in the interest of justice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division LR 21: (June 1995).

§329. Ex Parte Communication and Recusation

A. Ex parte communication is governed by R.S. 49:950 et seq.

B. Recusation

1. Recusation of a Presiding Officer

a. Any motion by a party requesting recusal of a presiding officer pursuant to R.S. 49:950 et seq. shall be filed in the adjudicatory record promptly upon discovery of the alleged disqualification with a copy served personally or by mail upon the presiding officer. The motion shall be accompanied by an affidavit (with any supporting documentation) stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. This motion shall be filed prior to the adjudicatory hearing unless the party discovers the facts constituting the grounds for recusation thereafter, in which event it shall be filed immediately after the facts are discovered, but prior to a decision or recommendation.

b. If a valid ground for recusation is set forth in the motion and supporting affidavit and documents, the presiding officer shall either promptly recuse himself or refer the motion to the secretary for a decision, notwithstanding the requirements of LAC 33:I.361. The issue shall be determined promptly by the secretary.

c. Upon the entry of an order of disqualification affecting a presiding officer, the secretary shall assign another presiding officer or conduct the hearing himself.

2. Recusation of the Secretary

a. Any motion to recuse the secretary shall be filed into the adjudicatory record promptly upon discovery of the alleged disqualification with a copy served personally or by mail upon the secretary. The motion shall be accompanied by an affidavit (with any supporting documentation) stating with particularity the grounds upon which it is claimed that a fair and impartial decision cannot be accorded. This motion shall be filed prior to a final decision by the secretary.

b. If a valid ground for recusation is set forth in the motion and supporting affidavit and documents, the secretary shall either promptly recuse himself or hold an evidentiary hearing on the issue of his recusal.

c. If the secretary determines that he is to be a witness at the recusal hearing, then he shall recuse himself from said hearing and ask the governor to appoint a secretary ad hoc to preside at the recusal hearing. The secretary ad hoc shall

promptly render a decision on the recusal following the hearing. If the secretary is not to be a witness, the secretary shall promptly render a decision on his recusal following the hearing. If the ultimate decision is to recuse the secretary, the secretary shall promptly request the governor to appoint a secretary ad hoc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§331. Pleadings: Form and Content

A. Pleadings shall:

1. state the name, mailing address, and telephone number of the person causing the pleading to be filed. In instances where the person filing a request for a hearing is represented by another person, that person's name, address, and telephone number shall be included in the request;

2. be legibly written in ink, typewritten, or printed with one-inch top, bottom, and side margins and shall be on strong durable white paper, no larger than 8½ by 11 inches;

3. be divided into separate numbered paragraphs and double-spaced;

4. state clearly, concisely, and particularly all relevant facts which give rise to and support the relief sought;

5. when appropriate, identify any statute, rule, written statement of law or policy, decision, order, permit, license, or any other regulatory mechanism and the particular aspect of each upon which the pleading relies;

6. state clearly and concisely the relief or action sought;

7. be signed in ink by the party filing same or by his or her duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he or she has read the document and that, to the best of his or her knowledge, information, and belief, every statement contained in the document is true; and

8. certify that service has been made in accordance with LAC 33:I.335.

B. The heading shall be similar in format to and shall include the information contained in the following example:

STATE OF LOUISIANA	
DEPARTMENT OF ENVIRONMENTAL QUALITY	
IN THE MATTER OF	
(Name of Respondent, Permit	DOCKET NUMBER
Applicant, or Other Matter)	
(Enforcement Tracking Number)	
PROCEEDINGS UNDER THE	
LOUISIANA ENVIRONMENTAL	
QUALITY ACT	
R.S. 30:2001 ET SEQ.	(Date Filed and
	Clerk's Stamp or
	Signature)

[TITLE OF PLEADING]

C. Failure to comply with this Section shall not invalidate the pleadings, but the presiding officer shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment or supplementation of any pleading, or to take such other action as may be appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§333. Filing of Pleadings and Documents

A. Any pleading, document, or other item which is being filed into the adjudicatory record shall be filed by mail, telephonic facsimile, or other method of delivery with the administrative hearings clerk, Louisiana Department of Environmental Quality, Administrative Hearings Division.

B. All pleadings, documents, or other items shall be deemed filed on the date received by the administrative hearings clerk. Receipt of a filing by telephonic facsimile equipment on or before the due date shall be considered as timely filed, provided the original document is filed into the adjudicatory record within five working days of receipt of the telephonic facsimile.

C. An original and one copy of all pleadings and documents shall be filed unless otherwise specifically provided by a particular regulation, or order of the presiding officer.

D. Discovery requests and responses thereto shall be served upon a party, his counsel of record, or other designated representative, but shall not be filed in the record of the proceedings. The party responsible for service of the discovery materials shall retain the original and become the custodian of such materials. The provisions of this Section shall not be construed to preclude the filing of any discovery materials as exhibits or as evidence in connection with a motion or hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§335. Service

A. Except where otherwise required by law, on or before the day that a pleading is filed with the administrative hearings clerk, service of same shall be made upon all parties, attorneys, or designated representatives by mail or any other method of delivery, including telephonic facsimile equipment, provided the receiving person maintains such equipment at his office and it is operating at the time the service is made.

B. Unless otherwise provided herein, service by mail or by telephonic facsimile equipment is effective on the date mailed or transmitted. Personal or domiciliary service is effective when delivered or tendered, even if delivery is refused.

C. When a party is represented by an attorney or other designated representative or has appointed an agent for service of process, notice may be given to the party through said attorney, other designated representative, or agent.

D. Notice to a party or person seeking to achieve party status shall be given at the last address filed into the adjudicatory record. Any party or person seeking party status shall timely file into the adjudicatory record notice of any change of address.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§337. Computation of Time

In computing any period of time prescribed or allowed in this Chapter or the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the day on which the designated period begins shall not be included. The last day of the designated period shall be included unless it is a Saturday, Sunday, or a legal holiday as provided in R.S. 1:55, in which event the designated period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§339. Conferences

A. When a request for hearing is granted, the presiding officer shall notify the parties of the date, time, and location of the initial status conference.

B. The purpose of the initial status conference shall be to:

1. enroll counsel of record or other official representative;

2. discuss the nature of the proceedings, contentions of the parties, contested issues, stipulations, pleadings, discovery, motions, settlement possibilities, estimated time to try the case, and other matters; and

3. establish hearing dates and prehearing deadlines.

C. The presiding officer may order additional conferences as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§341. Failure to Appear

If a party fails to appear at or participate in a conference or hearing the presiding officer may:

1. proceed with the conference or hearing;
2. continue the conference or hearing;
3. limit the party's participation at a hearing; or
4. terminate the adjudication pursuant to LAC 33:I.365.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§343. Motions

A. Any party may file motions relating to an adjudication.

B. Except as otherwise permitted by the presiding officer, all motions, other than those made orally on the record during a hearing, shall be submitted in writing and shall comply with LAC 33:I.331, with copies served on all parties.

C. The parties may request oral argument or a hearing, but it will be allowed only when ordered by the presiding officer. All other motions will be decided by the presiding officer on the basis of the adjudicatory record.

D. Untimely filing of motions or failure to file or untimely filing of supporting memoranda, without good cause, may result in the denial of the motion or delay in consideration of it. Untimely filing of opposition to motions or failure to file or untimely filing of supporting memoranda in opposition to motions, without good cause, may result in the granting of the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§345. Continuances

Any proceeding may, for good cause, be continued by the presiding officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§347. Discovery

A. Prehearing Exchange

1. Prior to completing discovery, all parties shall exchange or allow inspection of the items listed below:

- a. all exhibits to be offered during the adjudicatory hearing except those to be offered solely for purposes of rebuttal or impeachment;

- b. lists of witnesses to be called at the adjudicatory hearing (except those for purposes of rebuttal or impeachment) designating fact and expert witnesses and a concise statement of the nature of each witness's testimony;

- c. lists of matters to be officially noticed; and

- d. curriculum vitae for expert witnesses listed.

2. The duty imposed by this Subsection shall be ongoing; the parties shall supplement the exchange as may be necessary.

3. Failure to participate in said exchange in the manner required may result in limitation of use of the witnesses or other items at a hearing.

B. In the interest of administrative economy, the parties shall first attempt to obtain discovery by agreement or through the Public Records Act, R.S. 44:1 et seq.

C. Subject to the provisions of this Section, discovery shall be only by depositions of witnesses, within or without the state, and requests for production of documents and things. These forms of discovery may be utilized in the same manner as provided by law for civil actions regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action or which appears reasonably calculated to lead to admissible evidence.

D. A request for a subpoena duces tecum or for production of documents and things shall describe with reasonable particularity the items requested. The requesting party shall provide written reasons why the burden of obtaining the items through R.S. 44:1 et seq. outweighs the burden to the department in producing the items pursuant to the discovery request.

E. Notwithstanding any other provisions of this Section,

upon application of any party, the presiding officer, for good cause, may:

1. issue any order necessary to protect a party or person from annoyance, embarrassment, oppression, disclosure of confidential information, or undue burden or expense; and

2. allow forms of discovery other than depositions and requests for production of documents and things.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§349. Confidentiality

A. All portions of adjudicatory records are subject to review by all parties and the general public unless a written request for confidentiality under R.S. 49:950 et seq. or R.S. 30:2030 is granted by the presiding officer.

B. A motion for protective order, or other request to limit discovery, may be considered as a request for confidentiality. In the event a protective order is issued, or discovery is otherwise limited, the presiding officer may designate in writing as confidential that portion of the adjudicatory record necessary to enforce the provisions of the protective order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§351. Subpoenas

A. The issuance of a subpoena shall be by order of the presiding officer and upon written request of a party directed to the administrative hearings clerk, whose duty and function it shall be to process all subpoenas.

B. Failure of a witness to appear or respond to a subpoena will not be grounds for a continuance unless:

1. the testimony of the witness is shown to be material, relevant, and not merely cumulative to the proceeding; and

2. the request for the subpoena was received by the administrative hearings clerk at least 15 days prior to the date required for appearance or return on the subpoena, or for good cause shown.

C. To request the issuance of a subpoena, the following procedure shall be followed:

1. unless otherwise ordered by the presiding officer, the subpoena shall be prepared by the requester;

2. the subpoena must include the heading contained in LAC 33:I.331.B and contain the name of the party and the representative requesting the subpoena; the complete name of the person being subpoenaed; the specific service address (with directions if necessary); whether personal service is necessary; a sufficient description of any document or item to be produced; and the date, time, place, and proceeding for which the subpoena is requested;

3. a subpoena adapted from the Louisiana Code of Civil Procedure formulary is acceptable. Sample subpoena forms are available from the administrative hearings clerk; and

4. a request on behalf of any party other than the department shall state the number of miles between the

witness's address and the place where the appearance and/or return is to be made and be accompanied by a check made payable to the department in the amount to cover costs, including the following:

- a. service fees due whenever a private process server or any other person authorized by law is utilized to obtain service; and

- b. and an amount sufficient to cover witness fees pursuant to R.S. 49:956(5).

D. The presiding officer may fix expert witness fees in accordance with R.S. 49:950 et seq.

E. For good cause the presiding officer may issue any order necessary to protect a party or person from a subpoena which may cause disclosure of confidential information, undue burden or expense, annoyance, embarrassment, or oppression.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§353. Prehearing Order

A. The presiding officer may require, prior to the adjudicatory hearing, that the parties submit a joint proposed prehearing order approved and signed by all parties or their counsel of record. Except as otherwise ordered by the presiding officer, the proposed prehearing order shall set forth the following:

1. a brief but comprehensive statement of the factual and legal contentions of each party;

2. a list of the legal authority (including statutes, code articles, regulations, and cases) to be relied upon by each party at the adjudicatory hearing;

3. a detailed itemization of all pertinent uncontested facts established by pleadings, stipulations, and admissions;

4. a detailed itemization of all contested issues of fact;

5. a list of all contested issues of law;

6. a list and brief description of all exhibits to be offered in evidence by each party. Exhibits to be used solely for impeachment or rebuttal need not be included on the list;

7. a list naming the fact witnesses and the expert witnesses each party may call and a short statement as to the nature of their testimony. Witnesses to be called solely for impeachment or rebuttal need not be included on the list;

8. a list of all matters to be officially noticed;

9. a statement by each party as to the estimated length of time necessary to present its case;

10. all other stipulations;

11. a list of all pending motions;

12. a statement as to any other matters not included in any of the previous headings which may be relevant to a prompt disposition of the case;

13. the following certification:

"We hereby certify that we have conferred for the purpose of preparing this joint proposed prehearing order and that we have no objections to the contents of this prehearing order other than those attached hereto pursuant to LAC 33:I.353.B"; and

14. this order:

"IT IS ORDERED that this matter be set for hearing at _____ o'clock _____ .m. on the _____ day of _____, 19____ and to continue thereafter until completed."

PRESIDING OFFICER

B. In the event that the representative or counsel of any party disagrees with the proposed prehearing order, or any part thereof, he shall attach to the order a signed statement of his opposition and reasons therefor but shall, nevertheless, sign the joint proposed prehearing order which shall be deemed to be approved in all respects except those covered in the statement of opposition.

C. The representative or counsel who has certified the prehearing order as submitted to the presiding officer shall attend the prehearing conference and the adjudicatory hearing unless permission is granted by the presiding officer for a substitute to appear. Any counsel or other representative attending the conference shall be knowledgeable of all aspects of the case and shall possess the necessary authority to commit his client, associate counsel, and witnesses regarding changes, stipulations, and hearing dates.

D. At the conclusion of the prehearing conference, the presiding officer shall sign the order setting the case for the adjudicatory hearing, and it shall thereafter be filed in the adjudicatory record. No amendments to the filed prehearing order shall be made prior to the hearing except at the discretion of the presiding officer based upon consent of the parties or for good cause shown.

E. If a party fails to cooperate in preparing or filing a prehearing order, the presiding officer may proceed with the prehearing conference, sign the prehearing order as drafted, continue the prehearing conference, continue the hearing, or limit the party's right to introduce evidence, cross-examine witnesses, argue, or otherwise participate in the adjudicatory hearing.

F. The presiding officer may order such other action as he deems necessary to facilitate the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§355. Evidence

A. Adjudications are governed by R.S. 49:950 et seq. Although adjudications are not bound by the formal rules of evidence prescribed for civil actions, the Louisiana Code of Evidence may be used as a guide in evidentiary determinations.

B. The presiding officer may call and question a witness or elicit evidence on his own motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§357. Exhibits

A. Maps, drawings, and other exhibits should not exceed 8½ by 14 inches unless they are folded to the required size. Exhibits not conforming to this rule may be excluded.

B. Prior to use of exhibits at a hearing, copies shall be furnished to the presiding officer and all parties, unless the presiding officer shall rule otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§359. Record; Transcripts

A. The adjudicatory record may, for good cause shown, be left open or reopened for the receipt of additional evidence, subject to the right of traversal by other parties and provided that a copy of such evidence is mailed or an opportunity to inspect it is provided to the parties at or before the time it is offered for introduction into the adjudicatory record.

B. It shall be the responsibility of the Administrative Hearings Division to have all adjudicatory hearings recorded, and such recordings shall be the official recording of the hearing. A verbatim transcript shall be made when required by law, requested by a party or the presiding officer, or requested for appeal. Any person requesting that a transcript be made shall pay the estimated costs in advance, unless exempt.

C. Upon notice of appeal and after payment of the estimated transcription costs in advance by the appellant, the presiding officer shall order that the designated portions of the record be transcribed and that this transcript be included in the record for appeal.

D. When a transcript of any part of the proceeding has been made, the original shall be filed into the adjudicatory record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§361. Interlocutory Review

A. A party seeking review by the secretary of an interlocutory order, decision or ruling shall file a motion for review of the order with the administrative hearings clerk, who shall forward the motion to the secretary.

B. The presiding officer may stay further proceedings to allow a party to seek review of the interlocutory order, decision or ruling.

C. Within five days of receipt of the motion from the administrative hearings clerk, the secretary shall:

1. affirm the interlocutory order, decision or ruling;
2. modify or overrule the order, decision or ruling, stating the factual and legal reasons for his action;
3. remand the matter with instructions to the presiding officer;
4. decline to review the order, decision or ruling; or
5. file with the administrative hearings clerk written notice extending the five-day period.

D. If the secretary fails to act on the motion within the five-day period, or within any extension, as provided in Subsection C of this Section, he shall be deemed to have declined to review the matter.

E. If the secretary declines to review an interlocutory order, decision or ruling, this shall not preclude the mover from raising the matter later in a motion for review by the secretary of a decision on the merits under LAC 33:I.369.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§363. Briefs, Proposed Findings of Fact, and Conclusions of Law

The presiding officer may:

1. require any party to file briefs, proposed findings of fact, and/or proposed conclusions of law;

2. require rebuttal and/or traversal of the briefs and/or proposals; or

3. require that any briefs, proposed findings of fact, or conclusions of law include references to those parts of the record, transcript, or exhibits that support them and that any rebuttal or traversal responds to and correlates with the briefs, proposals, and traversals filed by other parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§365. Termination of Adjudications

A. Except where a decision is rendered on the merits, the presiding officer shall issue an order terminating an adjudication:

1. upon written motion, accompanied by an unconditional withdrawal of the request for a hearing filed with the administrative hearings clerk;

2. upon written motion, accompanied by a rescission by the department of the underlying action;

3. upon joint written motion signed by the department and the applicant, permittee, or respondent, accompanied by a stipulation, agreed settlement, or consent order; or

4. by any other procedure allowed by law.

B. The presiding officer may also terminate an adjudication upon the default of the person requesting the hearing if:

1. that person fails to appear at the hearing;

2. the department moves for a default; and

3. the adjudicatory record contains proof that notice of the date, time, and place of the hearing was provided to that person.

C. Upon the default of the person requesting a hearing, the request shall be deemed withdrawn and the action of the department shall become final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§367. Presiding Officer's Decision

A. When a presiding officer renders a decision on the merits in an adjudication, a copy thereof shall be filed with the secretary. It shall also be served by certified mail or by hand upon each party to the proceedings.

B. A decision on the merits by the presiding officer shall become final and effective as to any party 30 days after service unless said 30-day period is interrupted by the filing of:

1. a petition for reconsideration, reopening, or rehearing pursuant to Subsection C of this Section; or

2. a motion for review by the secretary pursuant to LAC 33:I.369.

C. Pursuant to R.S. 49:959, any party may request a rehearing, reopening of the record, or reconsideration of a decision on the merits (in whole or in part) of the presiding officer if such request is filed with the administrative hearings clerk within 10 days from the date of its entry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§369. Review by Secretary of Decisions by the Presiding Officer

A. A party may seek review by the secretary of a presiding officer's decision on the merits within the time frame specified in LAC 33:I.367 by filing with the administrative hearings clerk a written motion for review stating the grounds upon which the review is requested. However, if a petition for reconsideration, reopening, or rehearing is filed timely, a motion for review by the secretary must be filed within 30 days following:

1. service of an order denying the petition; or

2. service of a decision on the merits by the presiding officer following a reconsideration, reopening, or rehearing.

B. Upon receipt of a motion for review, the secretary may:

1. deny the motion, at which time the decision shall become final agency action; or

2. grant the motion as to one or more of the grounds on which the review is requested or on such other grounds as he deems proper, and:

- a. remand the matter with instructions to the presiding officer;

- b. overrule the decision of the presiding officer and render his own decision based on the record developed; or

- c. hold new hearings or collect additional evidence or both and render his own decision.

C. In the event the secretary overrules a decision of the presiding officer, renders his own decision based on the record developed, or holds a new hearing and renders a decision, the secretary shall issue findings of fact and conclusions of law.

D. The administrative hearings clerk shall serve a copy of the decision by certified mail upon all parties, their counsel of record, or other representative and record the date of mailing.

E. Pursuant to R.S. 49:959, any party may request a rehearing, reopening of the record, or reconsideration of a decision on the merits (in whole or in part) of the secretary if

such request is filed with the administrative hearings clerk within 10 days from the date of its entry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§371. Entry of Decisions

The original of any decision or order issued by the presiding officer or the administrative authority in connection with an adjudication, shall be filed with the administrative hearings clerk who shall notify all parties of the decision or order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

§373. Appeals to the Court of Appeal, First Circuit

A. Any final decision or order of the administrative authority appealable to the Court of Appeal, First Circuit shall not be subject to further review unless:

1. a motion for appeal is filed with the administrative hearings clerk within 30 days after notice of the final decision or order is served by certified mail or by hand upon the appealing party; or

2. if a rehearing, reopening of the record, or reconsideration is properly requested and denied, a motion for appeal is filed within 30 days after notice of the denial is served by certified mail or by hand upon the appealing party.

B. Copies of the motion for appeal shall be served upon the department and all parties of record.

C. Any motion for an appeal to the Court of Appeal, First Circuit shall comply with the local rules of that court and the Uniform Rules of Louisiana Courts of Appeal.

D. The filing of the motion for appeal does not automatically stay actions taken by the administrative authority. Unless otherwise directed by the secretary in writing, the presiding officer may grant a stay pending review by the court. A stay may also be granted by the secretary, or by the Court of Appeal, First Circuit, in accordance with law and the rules of the court.

E. Upon motion of a party, the presiding officer may allow the record to be supplemented if the party seeking to do so has demonstrated good cause for failure to previously designate the supplement as part of the record, and all parties are served with the motion to supplement the record and given an opportunity to be heard on the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Administrative Hearings Division, LR 21: (June 1995).

James B. Thompson, III
Assistant Secretary

9506#046

RULE

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

Commercial Operating Permit Evidentiary Hearings (LAC 33:V.303 and Chapter 7) (HW41)

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.303 and Chapter 7, (HW41).

These rule changes require evidentiary hearings on operating permit applications for commercial hazardous waste treatment, storage, disposal, or recycling facilities. Procedures for adjudications are being consolidated in rules under the Office of the Secretary, LAC 33:I.Chapter 3. This action is required to clarify this section of the text and to facilitate the hearing process.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§303. Overview of the Permit Program

* * *

[See Prior Text in A - N]

O. Application Submitted

All formal permit applications (Part II) shall be submitted in quintuplicate in the form presented in LAC 33:V.515, 517, 519, and 521 and in conformance with all requirements established by the administrative authority. An additional 15 copies shall be provided for any application upon which an evidentiary hearing is to be held by the administrative authority.

* * *

[See Prior Text in P - Q]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 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 10:496 (July 1984), LR 14:790 (November 1988), LR 16:220 (March 1990), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 21: (June 1995).

* * *

Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal Facility Permits

Subchapter A. Permits

§703. Permit Evaluation

* * *

[See Prior Text in A - C.3.d]

4. All draft permits prepared under this Section shall be accompanied by a fact sheet (LAC 33:V.703.D), and shall be

based on the administrative record, publicly noticed (LAC 33:V. 715) and made available for public comment (LAC 33:V.707). The administrative authority shall give notice of opportunity for a public hearing (LAC 33:V. 711), and respond to comments (LAC 33:V.707).

* * *

[See Prior Text in D. - D.2.f]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 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 21: (June 1995).

Subchapter B. Hearings

§709. Evidentiary Hearings on Operating Permit Applications for Commercial Hazardous Waste Treatment, Storage, Disposal, or Recycling Facilities

A. The purpose of an evidentiary hearing is to develop a record of facts, documents, testimony, and pleadings for submission to the administrative authority for consideration in making a permit decision.

B. An evidentiary hearing shall be held after the technical review on a permit application for operation of a commercial hazardous waste treatment, storage, disposal, or recycling facility. The administrative authority shall direct the Administrative Hearings Division to schedule an evidentiary hearing.

C. The administrative authority shall give public notice of the hearing at least 30 days prior to the date scheduled for commencement of the hearing.

D. Public notice shall be given for all evidentiary hearings.

1. The administrative authority shall mail a copy of a notice to the following persons (any person otherwise entitled to receive notice under this Subsection may waive his or her rights to receive notice for any classes and categories of permits):

- a. the applicant;
- b. the parish governing authority;
- c. those who request notice in writing and those who are on the area mailing list developed by the Hazardous Waste Division Permits Section.

2. The permit applicant shall publish a notice, provided by the administrative authority, in a daily or weekly major local newspaper of general circulation within the area affected by the facility or activity and in the official journal of the state.

3. The permit applicant shall provide for broadcasting the notice over a local radio station designated by the administrative authority.

4. The administrative authority shall require the applicant to provide and pay for the notifications in LAC 33:V.709.D.2 and 3 and submit proof thereof.

E. All public notices issued under LAC 33:V.709.D.1 and 2 shall contain the following minimum information:

1. name and address of the office processing the permit action for which notice is being given;
2. name and address of the permittee or permit applicant

and, if different, of the facility or activity regulated by the permit;

3. a brief description of the business conducted at the facility or activity described in the permit application;

4. name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the permit application;

5. a statement that intervention is required to participate at the hearing and a brief description of the procedures to qualify as an intervenor;

6. date, time, and place of the hearing;

7. a brief description of the nature and purpose of the hearing; and

8. any additional information considered by the administrative authority to be necessary or proper.

F. Administrative procedures for adjudications contained in LAC 33:I.Chapter 3 shall apply to evidentiary hearings except as provided in LAC 33:V.709.G and H or where they are incompatible with the purpose of the evidentiary hearing as stated in LAC 33:V.709.A.

G. The presiding officer shall not make findings of fact, conclusions of law, or recommendations or render decisions on the merits of the permit application. The presiding officer's authority terminates once the record is complete and has been transmitted to the administrative authority.

H. Administrative procedures for adjudications pertaining to intervention contained in LAC 33:I.323 shall apply to evidentiary hearings.

I. Upon completion of the evidentiary hearing, the administrative authority may require the applicant to submit additional relevant information to supplement the record.

J. No draft permit decision shall be issued until after the administrative authority has received and reviewed the record of the evidentiary hearing.

K. Unless otherwise directed by the secretary in writing, hearing officers hired pursuant to R.S. 30:2018 are hereby delegated authority to perform the functions of the presiding officer in evidentiary hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 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 16:683 (August 1990), LR 17:362 (April 1991), LR 21: (June 1995).

§721. Additional Information

In addition to any other notice requirements of this Chapter, a copy of the fact sheet, Part 1 of the permit application, and the draft decision shall be mailed to the applicant, the United States Environmental Protection Agency, the governing authority for the parish in which the facility or activity is located or proposed, and the library repository specifically designated to receive information concerning the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 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 21: (June 1995).

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

James B. Thompson, III
Assistant Secretary

9506#044

RULE

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

Reciprocal Recognition of Service Credit and Transfer of Credit

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity ("fund") pursuant to R.S. 11:3363(F), has adopted rules and regulations in accordance with the Administrative Procedure Act, R.S. 950 et seq., for reciprocal recognition of years of service credit and transfer of credits in accordance with the provisions of R.S. 11:143 and R.S. 11:142.

R.S. 11:143 generally provides authority of the board to transfer credits between this fund and public retirement systems, and R.S. generally provides authority of the board to recognize reciprocal credits of years of service. Since the above statutory provisions are ambiguous and do not address many issues that have arisen, adoption of these rules and regulations is warranted.

These rules clarify the provisions under R.S. 11:142 to receive a prorated benefit from the Firefighters Pension and Retirement Fund and another public retirement system based on years of membership service credit actually accrued under each respective system. The rules also clarify the provisions under R.S. 11:143 permitting an employee to transfer service credit accumulated under a public retirement system to the Firefighters Pension and Retirement Fund or to transfer service credit accumulated under the Firefighters Pension and Retirement Fund to the public retirement system.

The text of these rules may be viewed in its entirety at the Office of the State Register, 1050 North Third Street, Suite 512, Baton Rouge, LA.

William M. Carrouché
President

9506#001

RULE

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

Drug Abuse Resistance Education (D.A.R.E.) (LAC 22:III.5301)

The Louisiana Commission on Law Enforcement, in

accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and by the authority of the commission as provided in R.S. 15:1204.9, has adopted rules regarding the D.A.R.E. program.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 6. Grant Applications or Subgrants Utilizing Federal, State or Self-Generated Funds Chapter 53. Drug Abuse Resistance Education (D.A.R.E.) §5301. Introduction

A. In response to the mounting concern about the use of drugs by youth, the Louisiana Commission on Law Enforcement will make Drug Abuse Resistance Education (D.A.R.E.) grants available to sheriffs' offices and police departments who can demonstrate the capacity to offer the D.A.R.E. program in accordance with the national model. The D.A.R.E. Program National Model is contained in the U.S. Department of Justice, Bureau of Justice Assistance Program Brief, entitled "An Invitation to Project D.A.R.E." Copies of this program brief are available by contacting the Louisiana Commission on Law Enforcement, 1885 Wooddale Boulevard, Suite 708, D.A.R.E. Unit, Baton Rouge, LA 70806.

B. D.A.R.E. is a substance abuse prevention program designed to equip school children with skills for resisting peer pressure to experiment with tobacco, drugs, and alcohol. This program uses uniformed law enforcement officers to teach a formal curriculum to students in a classroom setting. Law enforcement officers must become certified by completing the required D.A.R.E. training offered through a certified d.a.r.e. training center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204.9.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 21: (June 1995).

Michael A. Ranatza
Executive Director

9506#022

RULE

Office of the Governor Division of Administration Office of State Purchasing

Central Purchasing Amendments (LAC 34:I.Chapters 3—27)

The Division of Administration, Central Purchasing, has amended the rules and regulations as promulgated in accordance with LAC Title 34, Part I, Chapters 3-27, Government Contracts, Procurement and Property Control, which were derived from the Louisiana Procurement Code, R.S. 39:1551-1736. The purpose of this amendment is to

3-1 506.1 (15)
make technical changes to form and grammar to clarify the State Purchasing rules and regulations.

Copies of the full text of this final rule may be obtained between the hours of 8 a.m. and 4:30 p.m. on any business day at the Office of the State Register, 1051 North Third Street, Fifth Floor, Capitol Annex, Baton Rouge, LA 70802, telephone (504) 342-5015.

Virgie O. LeBlanc, C.P.P.O.
Director

9506#042

RULE

Department of Health and Hospitals Board of Dentistry

Advertising and Soliciting by Dentists (LAC 46:XXXIII.301)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.301, Advertising and Soliciting by Dentists. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

§301. Advertising and Soliciting by Dentists

A. Scope. This Section provides for advertising requirements in addition to those set forth in R.S. 37:774 and R.S. 37:775 for dentists licensed and practicing in this state. The provisions in this Section shall govern any and all forms of advertisements including but not limited to all forms of printed and electronic media and direct or telephone solicitations.

B. Identification of Licensee. All advertising in any medium must identify the Louisiana licensed dentist who sponsors or benefits from, and assumes total responsibility for, the advertisement. The term *identify* shall mean the use of the licensee's commonly used name or the name appearing on his dental license or renewal certificate, together with the current address and telephone number the licensee has on file with the board.

C. Approved Specialties. The board has reviewed and approved the "Standards for Advanced Specialty Education Programs" set forth by the Commission on Dental Accreditation of the American Dental Association and approves only the following specialties:

1. Dental Public Health;
2. Endodontics;
3. Oral and Maxillofacial Surgery;
4. Oral Pathology;
5. Orthodontics and Dentofacial Orthopedics;
6. Pediatric Dentistry;

7. Periodontics; and

8. Prosthodontics.

D. Definitions

Advertisement and *Advertising*—any statement, oral or written, disseminated to or displayed before the public or any portion thereof with the intent of furthering the purpose, either directly or indirectly, of selling professional services or offering to perform professional services or inducing members of the public to enter into any obligation relating to such professional services. The provisions of this Section shall apply to advertising of any nature regardless of whether it is in the form of paid advertising.

Dental Public Health—the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care program, as well as the prevention and control of dental diseases on a community basis. Implicit in this definition is the requirement that the specialist have broad knowledge and skills in public health administration, research methodology, the prevention and control of oral diseases, the delivery and financing of oral health care, and the identification and development of resources to accomplish health goals.

Endodontics—the branch of dentistry that is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompasses the basic clinical sciences including biology of the normal pulp; the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp; and associated periradicular condition.

Oral and Maxillofacial Surgery—the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

Oral Pathology—the specialty of dentistry and discipline of pathology which deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes and effect of these diseases. The practice of oral pathology includes research, diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations, and management of patients.

Orthodontics and *Dentofacial Orthopedics*—the area of dentistry concerned with the supervision, guidance and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex. Major responsibilities of orthodontic practice include the diagnosis, prevention, interception and treatment of all forms of malocclusion of the

teeth and associated alterations of their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiological and aesthetic harmony among facial and cranial structures.

Pediatric Dentistry—the practice and teaching of comprehensive preventive and therapeutic oral health care for children from birth through adolescence. It shall be construed to include care for special patients beyond the age of adolescence who demonstrate mental, physical and/or emotional problems.

Periodontics—is that specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function and esthetics of those structures and tissues.

Prosthodontics—the branch of dentistry pertaining to the restoration and maintenance of oral function, comfort, appearance and health of the patient by the restoration of the natural teeth and/or the replacement of missing teeth and contiguous oral and maxillofacial tissue with artificial substitutes.

E. Prohibition on Misrepresentative or Fraudulent Advertising. No dentist shall disseminate or cause the dissemination of any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading in form or content. Additionally, no dentist shall disseminate or cause the dissemination of any advertisement or advertising which:

1. contains misrepresentations of fact;
2. is likely to mislead or deceive because in its context or in the context in which it is presented it makes only a partial disclosure of relevant facts;
3. contains laudatory statements about the dentist or group of dentists;
4. is intended or likely to create false, unjustified expectations of favorable results;
5. relates to the quality of dental services provided as compared to other available dental services;
6. advertises any procedure mandated or prohibited by law;
7. contains other representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or to be deceived. For example, it is fraudulent, false, deceptive, and misleading for a dentist who utilizes a laser in his dental practice to advertise that the use of lasers is painless, heals faster, or provides better results than other dental procedures. However, a dentist may advertise that he treats patients with a laser in certain circumstances.

F. Prohibition of In Person and Telephone Solicitations. In person and telephone solicitation of dental patients by a dentist or his agent poses an inherent danger to the public because such advertising cannot be supervised, may exert pressure on the prospective patient, and often demands an immediate response without affording the prospective patient an opportunity for comparison or reflection. Unlike an

advertisement appearing in print or on television or radio, in person and telephone solicitation does not simply provide information and leave the recipient free to act or not, but is ripe with the potential for overbearing persuasion. Accordingly, in person and telephone solicitation of dental services by a dentist or his agent is prohibited.

G. Advertising through or with Referral Services. Any dentist who advertises by, through or with a referral service shall be held responsible for the content of such advertising, and all advertisements shall comply with this rule and contain the following:

1. a statement that the advertisement is for a dental referral service and is in behalf of the dentist members of the referral service;
2. a statement that the referral service refers only to those dentists who have paid or been otherwise selected for membership in the referral service if payment for membership is not a requirement of the referral service;
3. a statement that membership in the referral service is limited by the referral agency;
4. a statement that dentists who receive referrals from the referral service charge no more than their usual and customary professional fees for service;
5. these required statements shall be present in reasonably recognizable print or volume equivalent to the size or volume of other information in the advertisement.

H. Disclosure of Area of Practice

1. Specialists must disclose their specialties in print larger than and/or bolder and noticeably more prominent than any service offered in their specialty or related area of dentistry.

2. Those dentists who have not completed a post-doctoral training program in an approved specialty of dentistry listed in Subsection C of this Section must advertise their areas of practice in such a way that the public is not misled into believing that the dentist has met the educational requirements for the specialties listed.

3. Anyone not qualified for the specialties listed in Subsection C must disclose "General Dentistry" or "Family Dentistry" in print larger and/or bolder and noticeably more prominent than any area of practice or service advertised.

4. Those group practices which include general dentists and specialists must list the phrase "General Dentistry and Specialty Practice" or "Family Dentistry and Specialty Practice" larger and/or bolder and noticeably more prominent than any service offered. All dentists associated with the group and their area of practice shall be listed.

I. Prohibition on Advertising Names of Persons Not Involved in Practice. Advertising which includes the name of a person who is neither actually involved in the practice of dentistry at the advertised location nor an owner of the practice being advertised is not permitted. However, to facilitate the smooth transition of a practice after its sale from one licensee to another, it is permissible to identify the previous owner in advertising by the new owner for a reasonable period of time not to exceed a period of six months. This rule does not provide authority to use a

previous owner's name in any advertising without first obtaining that licensee's written permission to do so.

J. Advertisement of Fees and Discounted Services

1. An appropriate disclosure regarding advertised fees is necessary to protect the public since there is no uniform code available which would enable a fair and rational selection based upon advertised fees.

2. Any advertisement containing fee information shall contain a disclaimer statement that the fee is a minimum fee, and that the charges may increase depending on the treatment required, if any.

3. Any advertised fee for a dental service shall state a specified period during which the fee is in effect or that service shall remain available at or below the advertised fee for at least 90 days following the final advertisement for that service.

4. Any dental service by which a fee is advertised shall be accompanied either by a description of that service using the exact wording for that service contained in the American Dental Association's (ADA) "Code on Dental Procedures and Nomenclature" which is hereby adopted and incorporated by reference, or by the specific ADA code number or numbers which accurately and fully describes the advertised dental service. Listing of a category of service (e.g., diagnostic, preventative, restorative, endodontics, periodontics, prosthodontics-removal, prosthodontics-fixed, oral surgery, orthodontics and dentofacial orthopedics) or a sub-category (any procedure whose ADA code number ends in "00", e. g., root canal therapy 03300) is not sufficient for the purpose of advertising a fee. The advertisement must specify by use of exact nomenclature or exact code number which procedure within the sub-category is being offered. If no fee is specified for a procedure advertised, a general description of the procedure by category or sub-category is permitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, December 1970, amended 1971, amended and promulgated LR 13:179 (March 1987), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#018

RULE

**Department of Health and Hospitals
Board of Dentistry**

**Authorized Duties of Expanded Duty Dental
Assistants (LAC 46:XXXIII.502)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the

Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.502, Authorized Duties of Expanded Duty Dental Assistants. No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Professions

Chapter 5. Dental Assistants

**§502. Authorized Duties of Expanded Duty Dental
Assistants**

An expanded duty dental assistant may perform the following duties:

1. - 7. ...

8. make impressions for occlusal splints, orthodontic retainers, and functional appliances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 19:205 (February 1993), amended, LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#017

RULE

**Department of Health and Hospitals
Board of Dentistry**

**Continuing Education Requirements
(LAC 46:XXXIII.Chapter 16)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.Chapter 16, Continuing Education Requirements. No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Professions

Chapter 16. Continuing Education Requirements

**§1611. Continuing Education Requirements for
Relicensure of Dentists**

A. - E. ...

F. Past and present dentist members of the Louisiana State Board of Dentistry are allowed four hours of continuing dental education credit for each meeting of the American Association of Dental Examiners attended by said past or present dentist member.

G. Credit will not be given for speeches given at meals, such as lunches or banquets.

H. No credit will be given for activities directed primarily to persons preparing for licensure in Louisiana.

I. No credit will be given for activities sponsored by dental schools, dental practices, or federal, state or local agencies for

the sole or principal benefit of their own members or employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21: (June 1995).

§1613. Continuing Education Requirements for Relicensure of Dental Hygienists

A. - E. ...

F. Past and present dental hygiene members of the Louisiana State Board of Dentistry are allowed four hours of continuing dental hygiene education credit for each meeting of the American Association of Dental Examiners attended by said past or present dental hygiene member.

G. Credit will not be given for speeches given at meals, such as lunches or banquets.

H. No credit will be given for activities directed primarily to persons preparing for licensure in Louisiana.

I. No credit will be given for activities sponsored by dental schools, dental practices, or federal, state or local agencies for the sole or principal benefit of their own members or employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21: (June 1995).

§1617. Continuing Education while on Inactive Status, and Requirements for Return to Active Status

A. Dentists and dental hygienists are not required to obtain continuing dental or dental hygiene education hours while in the retired or inactive status.

B. All dentists seeking to return to the active status must satisfy continuing education requirements as set forth in LAC 46:XXXIII.1611. The dentist must provide adequate documentation evidencing his/her satisfactorily completing continuing dental education hours for those years while he/she was in the retired status. The number of hours may be increased or decreased as determined by the board on a case-by-case basis.

C. All dental hygienists seeking to return from the inactive to the active status must satisfy continuing dental hygiene education requirements as set forth in LAC 46:XXXIII.1613. The dental hygienist must provide adequate documentation evidencing his/her satisfactorily completing continuing dental hygiene education hours for those years while he/she was in the inactive status. The number of hours may be increased or decreased as determined by the board on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance R.S. 37:760(8)(13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:662 (June 1994), amended LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#016

RULE

Department of Health and Hospitals Board of Dentistry

Requirements of Applicants for Licensure by Credentials (LAC 46:XXXIII.706)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.706, Requirements of Applicants for Licensure by Credentials. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 7. Dental Hygienists

§706. Requirements of Applicants for Licensure by Credentials

A.1. - 7. ...

8. has never been charged with and found guilty of or entered into a consent decree with any state board of dentistry within the previous five years before applying for licensure by credentials to any charge affecting his/her ability to practice dental hygiene or showing evidence of unprofessional conduct;

9. - 15. ...

16. possesses a current certificate in the American Heart Association (AHA) cardiopulmonary resuscitation health care provider course or its equivalent;

17. is a citizen or permanent resident of the United States unless otherwise prohibited by the North American Free Trade Agreement;

18. ...

19. in addition, applicants must also meet those requirements set forth in R.S. 37:764 and LAC 46:XXXIII.103;

20. further, applicants must be in compliance with or not be found guilty of any violations of R.S. 37:775 and/or R.S. 37:777.

B. Regardless of the applicant's compliance with the foregoing requirements, the board may refuse to issue a dental hygiene license based on the applicant's credentials for any reason listed in LSA-R.S. 37:775 or LSA-R.S. 37:777.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#015

RULE

Department of Health and Hospitals Board of Dentistry

Requirements of Applicants for Licensure by Credentials (LAC 46:XXXIII.306)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.306, Requirements of Applicants for Licensure by Credentials. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

§306. Requirements of Applicants for Licensure by Credentials

A.1. - 16. ...

17. possesses a current certificate in the American Heart Association (AHA) cardiopulmonary resuscitation health care provider course or its equivalent.

18. is a citizen or permanent resident of the United States unless otherwise prohibited by the North American Free Trade Agreement.

19. ...

20. in addition, applicants must also meet those requirements set forth in R.S. 37:761 and LAC 46:XXXIII.103.

B. Regardless of the applicant's compliance with the foregoing requirements, the board may refuse to issue a dental or dental hygiene license based on the applicant's credentials for any reason listed in LSA-R.S. 37:775 and LSA-R.S. 37:776.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July, 1992), amended LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#014

RULE

Department of Health and Hospitals Board of Dentistry

Requirements for Restricted Licensees (LAC 46:XXXIII.105)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the

Department of Health and Hospitals, Board of Dentistry adopts LAC 46:XXXIII.105, Requirements for Restricted Licensees. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 1. General Provisions

§105. Requirements for Restricted Licensees

A. All applicants for a restricted license must successfully complete the Louisiana State Board of Dentistry examination in jurisprudence prior to the issuance of said license, except those licenses issued for less than two months.

B. All recipients of restricted licenses who are members of the faculty of the LSU system, and who are graduates of a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, and who otherwise meet all requirements for a general license must receive same within two years from receipt of the original restricted license by successfully completing the LSBOD clinical licensure examination or by credentials.

C. All applicants for restricted licenses who graduated from a dental school not accredited by the Commission on Dental Accreditation of the American Dental Association and are part of the faculty of the LSU system, must submit with the restricted license application:

1. a letter from the dean of the dental school that he/she attended attesting to the applicant's successful completion of the course of study; and

2. a letter from the LSU system showing that the applicant is or is expected to be a member of its faculty, and verifying the competency of the applicant. The LSU system is responsible to notify the board as to any termination of employment of any faculty member or graduate student holding a restricted license.

D. Restricted licenses may be issued to residents and/or graduate students in the LSU system, but those licenses are only valid during the time the applicant is a resident and/or graduate student in the LSU system.

E. Oral surgery residents who attend medical school as a requirement of their residency training may keep their restricted license active during medical school, but may only work in the hospital sponsoring the residency or its affiliates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#013

RULE

Department of Health and Hospitals Board of Dentistry

Transmission Prevention of Hepatitis B Virus, Hepatitis C Virus and Human Immunodeficiency Virus (LAC 46:XXXIII.Chapter 12)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry amends LAC 46:XXXIII.Chapter 12, Transmission Prevention of Hepatitis B Virus, Hepatitis C Virus and Human Immunodeficiency Virus. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 12. Transmission Prevention of Hepatitis B Virus, Hepatitis C Virus and Human Immunodeficiency Virus

§1201. Scope of Chapter

As authorized and mandated by R.S. 37:1747, the rules of this Chapter prescribe practice and reporting requirements for dental health care providers including, but not limited to, dentists and dental hygienists to protect the public from the risk of the transmission of the Hepatitis B virus (HBV), Hepatitis C virus (HCV), and the Human Immunodeficiency Virus (HIV) to patients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:741 (July 1992), amended LR 21: (June 1995).

§1202. Definitions

As used in this Chapter, the following terms shall have the meanings specified:

* * *

HCV—the Hepatitis C virus.

HCV Seronegative—a condition where one has been HCV seropositive but is no longer infectious under the criteria of the Federal Centers for Disease Control or the Association of State and Territorial Public Health Laboratory Directors, or where one has never been infected with HCV.

HCV Seropositive—a condition where one has developed antigens sufficient to diagnose seropositivity to HCV evidencing infectability under the criteria of the Federal Centers for Disease Control or the Association of State Territorial Public Health Laboratory Directors.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:741 (July 1992), amended LR 21: (June 1995).

§1203. Universal Precautions

A. All dental health care providers who perform invasive procedures or perform functions ancillary to invasive procedures shall, in the performance of any such procedures or functions, strictly observe recognized universal precautions as currently recommended by the Federal Centers for Disease Control to minimize the risk of transmission of HBV, HCV or HIV.

B. In the event that the Federal Centers for Disease Control issue a new version of their recommendations for universal precautions, the board will take into consideration the nature of the changes to those recommendations and establish a reasonable period of time in which dental health care providers have to comply with any new or altered recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:742 (July 1992), amended LR 21: (June 1995).

§1205. Prohibitions and Restrictions

Except as may be permitted pursuant to §1207(G) and §1210 of this Chapter, a dental health care provider who is seropositive for HBV, HCV, or HIV, or who otherwise knows or should know that he or she carries and is capable of transmitting HBV, HCV, and HIV, shall not thereafter perform or participate directly in an exposure-prone procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:742 (July 1992), amended LR 21: (June 1995).

§1206. Exception; Informed Consent of Patient

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:741 (July 1992), repealed LR 21: (June 1995).

§1207. Self-reporting

A. Any dental health care provider who in the course of practice may at any time undertake to perform or participate in an exposure-prone procedure and who is or becomes HBV seropositive, HCV seropositive, or HIV seropositive shall be required to give notice of such seropositivity to the board in accordance with the provisions of this Section.

B. Within 90 days of the effective date of this Chapter, any dental health care provider who has previously been verified as being HBV seropositive, HCV seropositive, or HIV seropositive shall give notice of such diagnosis to the board on a reporting form supplied by the board.

C. Within 10 days from the date on which a dental health care provider has been verified as being HBV seropositive, HCV seropositive, or HIV seropositive, the dental health care provider shall give notice of such diagnosis to the board on a reporting form supplied by the board which shall be mailed to the executive director of the board, marked "Personal and Confidential" by registered or certified mail.

D. An applicant for licensure as a dental health care provider who at the time of application is verified as being HBV seropositive, HCV seropositive, or HIV seropositive shall acknowledge such diagnosis in his or her written application to the board.

E. - F. ...

G. Reports from two physicians and two laboratories evidencing change in the dental health care provider's serostatus shall be submitted to the executive director for the board evaluation of the change of serostatus when any dental health care provider previously verified as HBV seropositive or HCV seropositive who becomes HBV seronegative or HCV seronegative.

H. Any dental health care provider or applicant for licensure who is required under this Section to report his/her HBV, HCV, or HIV seropositive status and fails or neglects to provide notice as set forth in this Section shall be deemed in violation of R.S. 37:776(A)(1), (3), (7), (12), (16), (17), (20) and (24), and subject to sanctions associated therewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:743 (July 1992), amended LR 21: (June 1995).

§1208. Confidentiality of Reported Information

A. ...

B. The identity of the seropositive practitioner or applicant for licensure who has reported their status as being HBV, HCV, or HIV seropositive pursuant to Section 1207 of this Chapter shall be maintained in confidence by the board on all matters pertaining to the HBV, HCV, and HIV diseases, and shall not be disclosed to any other party, except as may be necessary in the investigation or prosecution of suspected violations of this Chapter, necessary for the evaluation and monitoring of the physical and psychological condition of the seropositive practitioner or applicant for licensure, or as allowed by R.S. 40:1300.14.

C. Provided that the identity of self-reporting practitioners and applicants seeking licensure is not disclosed, the provisions of this Section shall not be deemed to prevent disclosure by the board of statistical data derived from such reports, including, without limitation, the number and licensure class of those who have reported themselves as HBV, HCV, or HIV seropositive and their geographical distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:743 (July 1992), amended LR 21: (June 1995).

§1209. Advertisement of HBV, HCV or HIV Status Prohibited

No licensee may advertise within the state of Louisiana his/her HBV, HCV or HIV status or whether the dental office or environment is free of HBV, HCV or HIV.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health

and Hospitals, Board of Dentistry, LR 18:743 (July 1992), amended LR 21: (June 1995).

§1210. Authorization to Practice; Expert Review Panel

A. Dental health care providers who are HBV, HCV or HIV seropositive shall not perform exposure-prone procedures unless and until they have provided proper notice as required by this Chapter; submitted to periodic physical and psychological evaluations by board-appointed expert review panel, and have received authorization to practice and perform procedures as determined by said appointed panel. The panel shall serve as a consultant on a case-by-case determination of whether a procedure, when performed by a particular dental health care provider, does not pose a danger to the public. The panel must timely report any adverse or detrimental changes in the physical or psychological condition of the dental health care provider to the board. Following receipt of any and all such reports, the board shall have the right and the duty to re-evaluate the authorized procedures being practiced by the dental health care provider and may revise same or revoke same in its entirety if said report shows a change in the dental health care provider's physical or psychological condition which may affect the safety of the public.

B. Upon receipt of an adverse report from the panel, the board must review and evaluate said report, within 15 days of receipt of same, and take any and all necessary action to protect the safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:743 (July 1992), amended LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#012

RULE

Department of Health and Hospitals Board of Dentistry

Transportation Provided to Patients by Dentists (LAC 46:XXXIII.310)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry adopts LAC 46:XXXIII.310, Transportation Provided to Patients by Dentists. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Professions

Chapter 3. Dentists

§310. Transportation Provided to Patients by Dentists

When transportation is provided to a patient by a dentist, or his agent, for the purpose of providing dental care to that

patient, transportation must be provided for all subsequent follow-up treatments for the patient until all diagnosed treatment is completed. The dentist must keep written documentation for a minimum of three years following the initial visit by the patient evidencing his providing of transportation and/or his offer to provide transportation. An offer to provide transportation shall contain a signature by the patient, or the patient's parent or guardian, showing that they accepted or declined the offer of transportation for dental care. Lack of documentation shall be prima facie evidence that the offer to provide transportation was not made by the dentist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 21: (June 1995).

C. Barry Ogden
Executive Director

9506#011

RULE

Department of Health and Hospitals Board of Nursing

Licensure by Examination (LAC 46:XLVII.3349)

In accordance with R.S.49:950 et seq., the State Board of Nursing (board), pursuant to the authority vested in the board by R.S. 37:911, R.S. 37:918(A)(E)(K) and the provisions of the Administrative Procedure Act, has amended the professional and occupational standards for licensure as a registered nurse by examination as set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 33. General Rules

Subchapter D. Registration and Licensure

§3349. Licensure by Examination

* * *

C. Requirements for retaking the NCLEX-RN: Applicants for licensure by examination shall pass the exam within four attempts and within four years of graduation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, 920, and 921.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:77 (March 1981), amended LR 11:348 (April 1985), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1572 (December 1993), LR 21: (June 1995).

Barbara L. Morvant
Executive Director

9506#060

RULE

Department of Health and Hospitals Office of the Secretary

Voter Registration Assistance

The Department of Health and Hospitals, Office of the Secretary has adopted the following rule in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, oversees the administration of the Medicaid Program, the Women, Infants and Children Program, the Office of Mental Health centers and clinics, the Office of Alcohol and Drug Abuse clinics, and the Office for Citizens with Developmental Disabilities regional community services offices which are designated as voter registration agencies pursuant to Act 10 of the 1994 Third Extraordinary Session of the Louisiana Legislature. These agencies are thereby required to provide assistance to applicants and eligible recipients in registering to vote. Therefore, the department adopts the following rule to fulfill the mandates of these agencies as voter registration agencies.

This rule is being adopted to comply with Public Law 103-31 of the 103rd Congress which mandates that states designate all offices in the state that provide public assistance as voter registration agencies. Adoption of this rule is necessary to avoid sanctions or penalties from the United States government.

Rule

The Department of Health and Hospitals, Office of the Secretary designates the parish offices for the Medicaid Program, the Women, Infants and Children Program, the Office of Mental Health centers/clinics, the Office of Alcohol and Drug Abuse clinics, and the Office for Citizens with Developmental Disabilities regional community services offices as voter assistance agencies which shall provide the following services during regular office hours:

- 1) distribution of a mail voter registration application form to any applicant or recipient who is qualified to register;
- 2) assistance to any applicant or recipient in completing voter registration application forms, unless the person refuses such assistance;
- 3) acceptance of completed voter registration application forms for submission to the registrar of voters within the parish where the voter registration agency is located;
- 4) acceptance of any change of address or change of name submitted by a registrant to an agency which shall serve as a notification of change of address or change of name for voter registration unless the registrant states at the time of submitting the change that the change is not for voter registration purposes. The transmittal procedure shall be handled in the same manner as voter registration applications.

Rose V. Forrest
Secretary

9506#024

RULE

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, adopts 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. This rule, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., governs inpatient psychiatric admissions under the Medicaid Program.

Rule

1. Pre-admission Certification

A pre-admission certification must be obtained from the fiscal intermediary prior to all admissions. The issuance of the pre-admission certification shall be based upon the patient meeting the admission requirements contained in this proposed rule. In addition the certification of need for psychiatric hospitalization must be approved by the fiscal intermediary in order for this pre-admission certification to be issued.

2. Certification of Need for Psychiatric Hospitalization for all Persons under 21 Years of Age

The Certification of Need for Psychiatric Hospitalization requirement for all inpatient admission of persons under 21 years of age contained in the *Standards for Payment - Free-Standing Psychiatric Hospitals* is revised as follows. An independent team or the admitting hospital's interdisciplinary team, dependent upon whether the patient is Medicaid certified at admission must certify that the patient requires inpatient psychiatric services based on the following requirements. Requirements numbered (1), (2), and (3) or number (4) must be met and documented. (1) Ambulatory care resources available in the community have been tried or are inadequate in meeting the treatment needs of the patient at this time; and (2) proper treatment of the patient's psychiatric condition requires services on an in-patient basis under the direction of a psychiatrist or a physician under the supervision of a psychiatrist; and (3) the services can be expected to improve the patient's condition within a reasonable period of time or prevent further regression to the extent that services will no longer be needed. The availability or lack of outpatient resources is not a determining factor for Medicaid reimbursement. This certification of need must be completed no sooner than five days prior to the admission of the patient. This certification of need is required for all admissions, including emergency and court-ordered admissions.

A. For an individual who is a recipient when admitted to a facility or program, certification must be made by an independent team that (1) includes a physician; (2) has competence in diagnosis and treatment of mental illness, preferably in child psychiatry; and (3) has knowledge of the individual's situation. The physician must be licensed to

practice in Louisiana. Other acceptable signatories for the independent team in addition to the physician include RN, BCSW, MSW, Psychologist, or Licensed Professional Mental Health Counselor. No member of the independent team may be employed by or have a consultant relationship with the admitting hospital. For an individual who applies for Medicaid while in the facility the certification may be made by the admitting hospital interdisciplinary team. The interdisciplinary team must include as a minimum either (1) a board-eligible or board-certified psychiatrist; (2) a clinical psychologist who has a doctoral degree and a licensed physician; or (3) a licensed physician with specialized training and experience in the diagnosis and treatment of mental diseases and a psychologist who has a master's degree in clinical psychology and who has been certified by the state or by the state psychological association. In addition to this, the team must also include (1) an RN with specialized training or one year's experience treating mentally ill individuals; or (2) a psychiatric social worker, an occupational therapist or a psychologist with a master's degree in clinical psychology or who has been certified by the state or the state psychological association.

B. The date of the last signature of the independent team/admitting hospital interdisciplinary team establishes the earliest possible date for Medicaid reimbursement.

C. Nonemergency Admissions. The certification of need for psychiatric hospitalization must be mailed or FAXed to the fiscal intermediary in time for the approval process to be completed prior to the close of business on the same day as the pre-certification admission approval is requested. Any pre-admission certification granted subject to the receipt and approval of the certification of need will be voided if the certification of need is not received and approved.

D. Emergency Admissions. An emergency admission is an admission of a patient during other than normal business hours which is necessary to prevent his death or the serious impairment of his health based on the determination(s) of the independent team or admitting hospital's interdisciplinary team. A court-ordered admission, physician's emergency certificate, coroner's emergency certificate does not in itself justify characterizing the admission as an emergency admission. The certification of need must be FAXed to the fiscal intermediary on the next business day following the emergency admission.

3. Admission Procedures

The admission procedures contained in the *Standards for Payment - Free-Standing Psychiatric Hospitals* are no longer applicable and are superseded by the preadmission certification and length of stay requirements administered by the fiscal intermediary. A pre-admission certification must be obtained from the fiscal intermediary prior to all admissions. In addition for all persons under 21 years of age, the certification of need for psychiatric hospitalization must be approved by the fiscal intermediary for the pre-admission certification to be issued. The certification of need for emergency admissions must be FAXed to the fiscal intermediary on the next business day following the emergency admission.

If the request for a pre-admission certification is denied by the fiscal intermediary, the hospital may request a reconsideration of the decision. The reconsideration process involves a physician to physician consultation between the treating physician or his designee and the physician of the fiscal intermediary within one business day of the denial notification.

If the reconsideration process results in a denial of the admission the patient may initiate a formal appeal in writing to the Department of Health and Hospitals, Bureau of Appeals, in accordance with existing Department of Health and Hospitals' appeal procedures.

A hospital may request a retrospective review for Medicaid reimbursement when the patient's Medicaid eligibility is unknown at the time of admission.

4. Length of Stay Assignment Requirements

An initial length of stay assignment established by the fiscal intermediary is required for all inpatient psychiatric admissions. This period is based on the HCIA Length of Stay Southern Region grand totals and the clinical information provided on the patient. The initial length of stay will be assigned at the 50th percentile based on the admitting diagnosis. A hospital may request an extension of the length of stay assignment when appropriate care of the patient indicates the need for hospital days in excess of the originally-approved number. The extension request must be made no later than the last authorized day or last business day before the last authorized day. Extensions will be considered on a case-by-case basis and shall be determined on clinical information provided by the hospital. The initial approved extension will be assigned up to the 75th percentile. Request for subsequent approved extensions of up to three days may be submitted for consideration.

5. Discontinuation of the Vendor Payment for Leave Days

The vendor payment policy for the payment of leave day(s) due to temporary absence(s) of a recipient from a free-standing psychiatric hospital contained in the *Standards for Payment - Free-Standing Psychiatric Hospitals* is repealed. Medically necessary therapeutic passes as provided for non-psychiatric hospital stays are adopted for psychiatric stays with the same restrictions:

A. Medicaid reimbursement is not allowed for a day of service when the patient is absent from the facility/unit and is therefore unable to receive services. If the patient is absent from the facility/unit for more than 24 hours, the absence shall be considered a noncovered day.

B. The medical necessity for the therapeutic pass must be documented and any pass exceeding 72 hours must be considered a discharge.

All inpatient admissions to any hospital or distinct part psychiatric unit, must comply with the following admission, exclusionary, extension and discharge criteria in order to be reimbursed by the Medicaid Program.

Psychiatric Inpatient Admission

Criteria for Adults

Severity of Illness and Intensity of Service criteria must be met.

Severity of Illness

The patient must meet one or more of 1 or 2 or 3. If category 3 is utilized, the requirements for that category must be met.

1. Patient presents as a danger to self as evidenced by any of the following:

A. a suicide attempt within the past 72 hours; or

B. documentation that the patient has a current suicide plan, specific suicide intent, or recurring suicidal ideation; or

C. documentation of self-mutilative behavior occurring within the past 72 hours; OR

2. Patient presents as a danger to others due to a DSM-III-R Axis I diagnosis as evidenced by any of the following:

A. dangerously aggressive behavior during the past even days due to a DSM-III-R Axis I diagnosis; or

B. threats to kill or seriously injure another person with the means to carry out the threat and the threatening behavior is due to a DSM-III-R Axis I diagnosis; or

C. documentation that the patient has a current homicide plan, specific homicidal intent, or recurrent homicidal ideation and this is due to a DSM-III-R Axis I diagnosis; OR

3. Patient is gravely disabled and unable to care for self due to a DSM-III-R Axis I diagnosis as evidenced by the following. If indicator A is selected it must be accompanied by B or C.

A. Documentation of a serious impairment in function as compared to others of the same age in one or more major life role (school, job, family, interpersonal relations, self-care, etc.) due to a DSM-III-R Axis I diagnosis; AND

B. Inability of patient to comply with prescribed psychiatric and/or medical health regimens as evidenced by the following:

1) patient has a history of decompensation without psychotropic medications and patient refuses to use these medications as an outpatient; OR

2) patient is at risk of health or life due to noncompliance with medical regimens (e.g., insulin-dependent diabetes, etc.) and patient refuses these medical regimens as an outpatient; or

C. patient presents with acute onset or acute exacerbation of hallucinations, delusions, or illusions of such magnitude that the patient's well being is threatened.

Intensity of Service

The patient must meet all the criteria below.

1. Ambulatory (outpatient) care resources in the community do not meet, and/or do not exist to meet the treatment needs of the patient, or the patient has been unresponsive to treatment at a less intensive level of care; AND

2. Services provided in the hospital can reasonably be expected to improve the patient's condition or prevent further regression so that the services will no longer be needed by the patient; AND

3. Treatment of the patient's psychiatric condition requires services on an inpatient hospital basis, requiring 24-hour nursing observation, under the direction of a psychiatrist, such as, but not limited to:

A. suicide precautions, unit restrictions, and continual observation and limiting of behavior to protect self or

others. The patient requiring this treatment must not be on independent passes or unit passes without observation or being accompanied by hospital personnel or responsible other;

B. active intervention by a psychiatric team to prevent assaultive behavior. The patient requiring this treatment must not be on independent passes or unit passes without observation or being accompanied by hospital personnel or responsible other;

C. the patient exhibits behaviors that indicate that a therapeutic level of medication has not been reached and this necessitates 24-hour observation and medication stabilization. The patient requiring this treatment must not be on independent passes or unit passes without observation or being accompanied by hospital personnel or responsible other.

Exclusionary Criteria

If the adult meets one or more of the following criteria, Medicaid reimbursement will be denied.

1. Patients with a major medical or surgical illness or injury that would prevent active participation in a psychiatric treatment program. Patients must be medically stable.

2. Patients with criminal charges who do not have a DSM-III-R Axis I diagnosis.

3. Patients whose anti-social behaviors are a danger to others and those anti-social behaviors are characterological rather than due to a DSM-III-R Axis I diagnosis.

4. Patients who have a DSM-III-R Axis II diagnosis of mental retardation without an accompanying DSM-III-R Axis I diagnosis.

Psychiatric Inpatient Admission Criteria for Children

Severity of Illness and Intensity of Service criteria must be met.

Severity of Illness Criteria

Child must meet Criteria 1 or 2 or 3.

1. Child is a danger to self. Indicator A, B or C and D must exist to meet Criteria 1.

A. The child has actually made an attempt to take his/her own life in the last 24 hours. Details of the attempt must be documented; OR

B. The child has demonstrated self-mutilative behavior within the past 24 hours. Details of behavior must be documented; OR

C. The child has a clear plan to seriously harm him/herself, overt suicidal intent, and lethal means available to follow the plan. This information can be from the child or a reliable source. Details of the plan must be documented; AND

D. It is the judgment of a mental health professional that the child is at significant risk of making a suicide attempt without immediate inpatient intervention. OR

2. Child is a danger to others or property due to a DSM-III-R Axis I diagnosis as indicated by: Indicator A, B, or C and D must exist to meet Criteria 2. The criteria must arise from a DSM-III-R Axis I Diagnosis, and include the specific criteria that were met in order to justify that diagnosis.

A. The child has actually engaged in behavior harmful or potentially harmful to others or cause serious damage to

property which would pose a serious threat of injury or harm to others within the last 24 hours. Description of the behavior and extent of injury or damage must be documented, as well as the time the behavior occurred relative to present; OR

B. The child has made threats to kill or seriously injure others or to cause serious damage to property which would pose a threat of injury or harm to others, and has effective means to carry out the threats. Details of the threats must be documented; OR

C. A mental health professional has information from the child or a reliable source that the child has a current plan, specific intent, or recurrent thoughts to seriously harm others or property. Details must be documented; AND

D. It is the judgment of a mental health professional that the child is at significant risk of making a homicide attempt or engaging in other seriously aggressive behavior without immediate inpatient intervention.

3. Child is gravely disabled due to a DSM-III-R Axis I diagnosis as indicated by: Indicator A and either B, C or D must exist to meet Criteria 3. The criteria must arise from a DSM-III-R Axis I Diagnosis, and include the specific criteria that were met in order to justify that diagnosis.

A. The child has serious impairment of functioning compared to others of the same age in one or more major life roles (school, family, interpersonal relations, self-care, etc.) Specific description of the following must be documented:

1) deficits in control, cognition or judgment;

2) circumstances resulting from those deficits in self-care, personal safety, social/family functioning, academic or occupational performance;

3) prognostic indicators which predict the effectiveness of acute treatment; AND

B. The acute onset of psychosis or severe thought disorganization or clinical deterioration has rendered the child unmanageable and unable to cooperate in nonhospital treatment; OR

C. There is a need for medication therapy or complex diagnostic testing where the child's level of functioning precludes cooperation with treatment in an outpatient or nonhospital based regimen, and may require close supervision of medication and/or forced administration of medication; OR

D. A medical condition co-exists with a DSM-III-R Axis I diagnosis which, if not monitored/treated appropriately, places the child's life or well-being at serious risk.

Intensity of Service Criteria

Child must meet Criteria 1 and 2 and 3.

1. Services in the community do not exist or do not meet the treatment needs of the child, or the child has been unresponsive to treatment at a less intensive level of care. The services considered, tried, and/or needed must be documented; AND

2. services provided in the hospital can reasonably be expected to improve the child's condition or prevent further regression so that the services will no longer be needed by the child; AND

3. treatment of the child's psychiatric condition requires services on an inpatient basis, including 24-hour nursing

observation, under the direction of a psychiatrist. The child requiring this treatment must not be on independent passes or unit passes without observation or being accompanied by hospital personnel or a responsible other. These services include but are not limited to:

A. suicide precautions, unit restrictions, and continual observation and limiting of behavior to protect self or others or property;

B. active intervention by a psychiatric team to prevent assaultive behavior;

C. twenty-four hour observation and medication stabilization because the child exhibits behaviors that indicate that a therapeutic level of medication has not been reached.

Exclusionary Criteria

If child meets one or more of the following criteria, Medicaid reimbursement will be denied.

1. The child has a major medical or surgical illness or injury that prevents active participation in a psychiatric treatment program.

2. The child has criminal charges and does not meet severity of illness and intensity of service criteria.

3. The child has anti-social behaviors that are a danger to others and does not have a DSM-III-R Axis I diagnosis.

4. The child has a DSM-III-R Axis II diagnosis of mental retardation and does not meet severity of illness and intensity of service criteria.

5. The child lacks a place to live and/or family supports and does not meet severity of illness and intensity of service criteria.

6. The child has been suspended or expelled from school and does not meet severity of illness and intensity of service criteria.

Extension Criteria for Adults Includes both

Severity of Illness and Intensity of Service Needs

The extension of stay criteria for psychiatric admissions are formulated according to categories for adults and utilizes the *Diagnostic and Statistical Manual of Mental Disorders*. The edition of this manual bearing the most recent publication date and which has been approved for use by the director, Bureau of Health Services Financing, is the manual which will be used by the fiscal intermediary for identifying psychiatric diagnoses. There is no limit on the number of extensions that can be requested from the fiscal intermediary.

Severity of Illness

The patient must continue to meet one or more of 1, 2 or 3 of the criteria below.

1. Patient presents as a danger to self as evidenced by one or more of the following:

A. documentation that the patient continues to have a current suicide plan, specific suicide intent, recurring suicidal ideation, or suicide attempts;

B. documentation of continuing self-mutilative behavior as a result of a psychiatric disorder.

OR

2. The patient presents as a danger to others due to a DSM-III-R Axis I diagnosis as evidenced by one or more of the following criteria:

A. documentation that patient continues to display dangerously aggressive behavior due to a DSM-III-R Axis I diagnosis;

B. documentation that patient continues to threaten to kill or seriously injure another person with the means to carry out the threat AND the threatening behavior is due to a DSM-III-R Axis I diagnosis;

C. documentation that the patient continues to have a current homicidal plan, specific homicidal intent, or recurrent homicidal ideation AND this is due to a DSM-III-R Axis I diagnosis.

OR

3. The patient is gravely disabled and unable to care for self due to a DSM-III-R Axis I diagnosis as evidenced by the following. The selection of indicator A must be accompanied by B or C.

A. Documentation of a continuing serious impairment in function as compared to others of the same age in one or more major life roles (school, job, family, interpersonal relations, self-care, etc.) due to a DSM-III-R Axis I diagnosis. AND

B. Documentation of the continuing inability of the patient to comply with prescribed psychiatric and/or medical health regimens as evidenced by one of the following:

1) patient has a history of decompensation without psychotropic medications and continues to refuse these medications; or

2) patient is at risk of health or life due to non-compliance with medical regimens (e.g., insulin-dependent diabetes, etc.) and continues to refuse these regimens.

OR

C. Documentation that patient continues to present with exacerbation of hallucinations, delusions, or illusions of such magnitude that the patient's well being is threatened.

Intensity of Service

The patient must continue to meet all the criteria below.

1. Ambulatory (outpatient) care resources in the community do not meet, and/or do not exist to meet the treatment needs of the client, or the patient has been unresponsive to treatment at a less intensive level of care.

AND

2. Services provided in the hospital can reasonably be expected to improve the patient's condition or prevent further regression so that the services will no longer be needed by the client.

AND

3. Treatment of the patient's psychiatric condition requires services on an inpatient hospital basis, requiring 24-hour nursing observation, under the direction of a psychiatrist, such as, but not limited to:

A. suicide precautions, unit restrictions, and continual observation and limiting of behavior to protect self or others. The patient requiring this treatment must not be on independent passes or unit passes without observation or being accompanied by hospital personnel or responsible other;

B. active intervention by a psychiatric team to prevent assaultive behavior. The patient requiring this treatment must not be on independent passes or unit passes without

observation or being accompanied by hospital personnel or responsible other;

C. the patient exhibits behaviors that indicate that a therapeutic level of medication has not been reached and this necessitates 24-hour observation and medication stabilization. The patient requiring this treatment must not be on independent passes or unit passes without observation or being accompanied by hospital personnel or responsible other.

Extension Criteria for Children Includes both Severity of Illness and Intensity of Service Needs

The extension of stay criteria for psychiatric admissions are formulated according to categories for children and utilizes the *Diagnostic and Statistical Manual of Mental Disorders*. The edition of this manual bearing the most recent publication date and which has been approved for use by the director, Bureau of Health Services Financing, is the manual which will be used by the fiscal intermediary for identifying psychiatric diagnoses.

Severity of Illness

The child must continue to meet criteria A, B, or C of the following criteria.

1. Child is a danger to self. Indicator A or B and C must exist to meet criteria 1.

A. Continued documented presence of self-mutilative behavior.

OR

B. The child continues to have a clear plan to seriously harm him/herself, overt suicidal intent, and, if discharged, lethal means to follow the plan. Details of the plan must be documented. AND

C. It is the judgment of a mental health professional that the child is still at significant risk of making a suicide attempt without immediate inpatient intervention.

2. Child is a danger to others or property due to a DSM III-R Axis I diagnosis as indicated by the following. Indicator A or B, or C and D must exist to meet criteria 2. The criteria must arise from a DSM III-R Axis I Diagnosis and include the specific criteria that were met in order to justify that diagnosis.

A. The child continues to engage in behavior harmful or potentially harmful to others or cause serious damage to property which would pose a serious threat of injury or harm to others. Description of the behavior and extent of injury or damage must be documented, as well as the time the behavior occurred relative to present.

OR

B. The child continues to make threats to kill or seriously injure others or to cause serious damage to property which would pose a threat of injury or harm to others, and if discharged has effective means to carry out the threats. Details of the threats must be documented.

OR

C. A mental health professional has information from the child or a reliable source that the child has a current plan, specific intent, or recurrent thoughts to harm seriously others or property. Details must be documented. AND

D. It is the judgment of a mental health professional that

the child is at significant risk of making a homicide attempt or engaging in other seriously aggressive behavior without immediate inpatient intervention.

3. Child presents as gravely disabled due to a DSM III-R Axis I diagnosis as indicated by the following. Indicator A and either B, C, or D must exist to meet criteria 3. The criteria must arise from a DSM III-R Axis I Diagnosis and include the specific criteria that were met in order to justify that diagnosis.

A. The child continues to have serious impairment of functioning compared to others of the same age in one or more major life roles (school, family, interpersonal relations, self-care, etc.) Specific description of the following must be documented:

1) deficits in control, cognition, or judgment;

2) circumstances resulting from those deficits in self-care, personal safety, social/family functioning, academic, or occupational performance;

3) prognostic indicators which predict the effectiveness of acute treatment. AND

B. The acute onset of psychosis or severe thought disorganization or clinical deterioration continues to render the child unmanageable and unable to cooperate in nonhospital treatment.

OR

C. There is a continued need for medication therapy or complex diagnostic testing where the child's level of functioning precludes cooperation with treatment in an outpatient or nonhospital based regimen, and may require close supervision and/or involve forced administration of medication.

OR

D. A medical condition continues to co-exist with a DSM III-R Axis I diagnosis which, if not monitored/treated appropriately, places the child's life or well-being at serious risk.

Intensity of Service

The child must meet criteria 1 and 2 and 3.

1. Services in the community do not exist and/or do not meet the treatment needs of the child or the child has been unresponsive to treatment at a less intensive level of care. Services considered and rationale must be documented.

AND

2. Services provided in the hospital can reasonably be expected to improve the child's condition or prevent further regression so that the services will no longer be needed by the child.

AND

3. Treatment of the child's psychiatric condition requires services on an inpatient basis, including 24-hour nursing observation, under the direction of a psychiatrist. The child requiring this treatment must not be on independent passes or unit passes without observation or accompaniment by hospital personnel or a responsible other. These services include but are not limited to:

A. suicide precautions, unit restrictions, and continual

observation and limiting of behavior to protect self or others or property;

B. active intervention by a psychiatric team to prevent assaultive behavior;

C. twenty-four hour observation and medication stabilization because the child exhibits behaviors that indicate that a therapeutic level of medication has not been reached.

Discharge Criteria for Adults and Children

Medicaid payment will cease when patient no longer meets the extension criteria for Severity of Illness and Intensity of Service.

All inpatient admissions to any hospital or distinct part psychiatric unit for hospital-based medical detoxification services for alcoholism and drug abuse must comply with all of the following admission, exclusionary, extension and discharge criteria in order to be reimbursed by the Medicaid Program.

Admission Criteria for Hospital-Based Medical Detoxification Services for Alcoholism and Drug Abuse Admission Criteria

Severity of Illness and Intensity of Service criteria must be met.

Hospital-based medical detoxification services for alcoholism and drug abuse shall comply with both of the following criteria and their accompanying specifications:

1. admit only patients assessed as meeting the criteria for substance use disorder and principle diagnosis of substance abuse as defined by the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders III-R* or the chapter entitled "Mental Disorders" in the *International Classification of Diseases-9*; AND

2. certify that the patient meets the specifications in one of the dimensions of A, B, or C.

A. Acute alcohol and/or other drug intoxication and/or potential withdrawal. If Indicator 2 below is selected, it must be accompanied by one dimension under Indicator 1 or 3.

1) The patient is assessed as at risk for severe withdrawal syndrome as evidenced by:

a) CIWA-A (Clinical Institute Withdrawal Assessment-Alcohol) score (or other comparable standardized scoring system) greater than or equal to 20;

b) blood alcohol greater than 0.1 gm percent with withdrawal symptoms present, or blood alcohol greater than 0.3 gm percent;

c) pulse greater than 110 or blood pressure higher than 160/110 and CIWA-A or comparable score greater than 10;

d) history of seizures, hallucinations, myoclonic contractions, or delirium tremens when withdrawing from similar amounts of alcohol;

e) seizure, delirium tremens, hallucinations, myoclonic contractions, or hyperpyrexia;

f) daily ingestion of sedative hypnotics for over six months plus daily alcohol use, or regular use of another mind-altering drug known to have its own withdrawal syndrome,

and the patient has an accompanying chronic mental/physical disorder;

g) daily ingestion of sedative hypnotics above the recommended therapeutic dosage level for at least four weeks and the patient has an accompanying chronic mental/physical disorder;

h) antagonist medication used in the withdrawal (e.g., pharmacological induction of opiate withdrawal and subsequent management);

i) head trauma or loss of consciousness within 24 hours with resultant need to observe the intoxicated patient closely;

j) a patient with a history of opioid use who exhibits grade two or above opioid withdrawal (e.g., muscle twitching, myalgia, arthralgia, anorexia, nausea, vomiting, diarrhea, extremes of vital signs, dehydration, or "curled up position") requiring acute nursing care for management;

k) drug overdose compromising mental status, cardiac functioning or other vital signs;

l) patient with a history of daily opioid use for at least two weeks before admission and past attempts to stop at similar doses have resulted in one or more of the following withdrawal symptom: muscle twitching, myalgia, arthralgia, abdominal pain, rapid breathing, fever, anorexia, nausea, vomiting, diarrhea.

2) There is a strong likelihood the patient will not complete detoxification as evidenced by:

a) a past history of detoxification at a less intense level of care without completion of detoxification;

b) current use of medications or medical conditions known to interfere with ability to complete detoxification (MAO inhibitors with alprazolam).

3) This is the only available level of care that can provide the needed medical support and comfort for the patient as evidenced by:

a) detoxification regimen or patient's response to the regimen requires monitoring at least every two hours (e.g., clonidine detoxification with opiates or high dose benzodiazepine withdrawal); OR

b) the patient requires detoxification while pregnant; OR

B. Biomedical conditions and complications due to a primary diagnosis of a substance use disorder; one of the following conditions is required:

1) biomedical complications of addiction requiring medical management and skilled nursing care;

2) concurrent biomedical illness or pregnancy needing stabilization and daily medical management with daily primary nursing interventions;

3) presence of biomedical problems requiring inpatient diagnosis and treatment, such as:

a) liver disease or problems with impending hepatic decompensation;

b) acute pancreatitis requiring parenteral treatment;

c) active gastrointestinal bleeding;

d) cardiovascular disorders requiring monitoring;

e) multiple current medical problems;

- 4) recurrent or multiple seizures;
- 5) disulfiram-alcohol reaction;
- 6) life-threatening symptomatology related to excessive use of alcohol or other drugs (stupor, convulsions, etc.);
- 7) chemical use gravely complicating previously diagnosed medical conditions;
- 8) changes in the patient's medical status such as severe worsening of a medical condition making abstinence imperative, or significant improvement in an unstable medical condition allowing response to chemical dependency treatment;
- 9) demonstrating biomedical problems requiring 24-hour observation and evaluation; OR

C. Emotional/behavioral conditions and complications due to a primary diagnosis of a substance use disorder (one of the following):

- 1) emotional/behavioral complications of addiction requiring medical management and skilled nursing care;
- 2) concurrent emotional/behavior illness needing stabilization and daily medical management and primary nursing interventions;
- 3) uncontrolled behavior endangering self or others;
- 4) co-existing serious emotional/behavioral disorder which complicates the treatment of chemical dependency and requires differential diagnosis and treatment;
- 5) extreme depression presenting in a patient resulting in the patient being a danger to self or others;
- 6) thought process impairment, impairment in abstract thinking, limitation in ability to conceptualize to the degree that the patient's major life areas are severely impaired;
- 7) alcohol and other drug use gravely complicates or exacerbates previously diagnosed psychiatric or emotional/behavioral condition;
- 8) altered mental status with or without delirium as manifested by:
 - a) disorientation to self;
 - b) alcoholic hallucinations;
 - c) toxic psychosis.

Intensity of Services

One or more of the following service needs must be met:

1. intensive treatment with medications for delirium tremens;
2. I.V. medications or total parenteral nutrition (T.P.N.);
3. documented detoxification regime of decreasing drug dosage;
4. neurological checks and vital signs every two hours and "visual checks" every 15 minutes;
5. Environmental control such that the patient is prevented from harming self or others.

Extension Criteria for Hospital-Based Medical Detoxification Services for Alcoholism and Drug Abuse

Severity of illness and intensity of services criteria must be met.

Length of stay will vary with the severity of the illness and the response to treatment. Criteria 1 and 2 or 3 or 4 must be met.

1. The patient continues to meet the diagnostic criteria required for admission.

AND

2. Acute alcohol and/or other drug intoxication and/or potential withdrawal; persistence of acute withdrawal symptomatology or detoxification protocol requires continued medical and/or nursing management on a 24-hour basis.

OR

3. Biomedical Conditions and Complications:

A. A continued biomedical problem or intervening medical event which was serious enough to interrupt treatment, but the patient is again progressing in treatment.

OR

B. A biomedical condition that was initially interfering with treatment is improving, yet the patient still requires 24-hour continued medical management for this condition along with the treatment for the addiction.

OR

4. Emotional/behavioral Conditions and Complications:

A. The patient is making progress toward resolution of a concomitant emotional/behavioral problem, but continued medically managed and nursing interventions are needed before transfer can be made to a less intensive level of care.

OR

B. The patient is assessed as having an AXIS I psychiatric condition or disorder according to the current revision of the *American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders*, or its equivalent, which in combination with alcohol and/or other drug use, continues to present a major health risk and is actively being treated (e.g., medication stabilization).

Intensity of Services

One or more of the following criteria must be met:

1. Intensive treatment with medications for delirium tremens.
2. IV medications or total parenteral nutrition (T.P.N.)
3. Documented detoxification regime of decreasing drug dosage.
4. Neurological checks and vital signs every two hours and "visual checks" every 15 minutes.
5. Environmental control such that the patient is prevented from harming self or others.

Discharge Criteria

The patient is considered appropriate for discharge if Criteria 1 or 2 is met.

1. The patient is assessed post-admission as not having met the diagnostic criteria for Psychoactive Substance Use Disorder as defined by the current revision of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* or the current revision of the *International Classification of Diseases*.

OR

2. The patient must meet one of the following:

A. acute alcohol and/or other drug intoxication and/or potential withdrawal. The patient is assessed as not being intoxicated or in alcohol or other drug withdrawal or the symptoms have diminished sufficiently to be managed in a less

intensive level of care, and the patient does not meet any continued stay criteria that indicate the need for further treatment.

OR

B. biomedical conditions or complications:

1) the patient's biomedical problems, if any, have diminished or stabilized to the extent that daily medical and nursing management for the condition is no longer necessary, and the patient does not meet any of the continued stay criteria that indicate the need for further treatment; OR

2) a biomedical condition has arisen or an identified biomedical problem which is being addressed is not responding to treatment and needs treatment in another setting.

OR

C. emotional/behavior conditions and complications:

1) the patient's emotional/behavioral problems have diminished in acuity to the extent that the daily medical and nursing management is no longer necessary, and the patient does not meet any of the continued stay criteria that indicate the need for further treatment.

OR

2) an emotional/behavioral condition has arisen or an identified emotional/behavioral problem which is being addressed is not responding to treatment and needs treatment in another setting.

OR

D. treatment resistance:

the patient consistently refuses continued treatment despite motivating interventions, and the patient does not meet any of the continued stay criteria that indicate the need for further treatment.

General Provisions

Inpatient admissions for dual Medicare/Medicaid beneficiaries are subject to the requirements when Medicare Part A benefits have been exhausted.

Rose V. Forrest
Secretary

9506#057

RULE

**Department of Public Safety and Corrections
Board of Private Investigator Examiners**

Truth in Advertising (LAC 46:LVII.731)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505(B)(1), the Department of Public Safety and Corrections, Board of Private Investigator Examiners, hereby amends Part LVII of Title 46, by adding Chapter 7, Section 731 pertaining to truth in advertising by private investigators.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the Louisiana State Board of Private Investigator Examiners.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LVII. Private Investigator Examiners

Chapter 7. Client-Investigator Relationship

§731. Truth in Advertising

A. An investigator shall, when advertising years of experience, clearly state the actual years of experience with the private investigative industry.

B. When advertising years of experience in private investigative industry, the ad must indicate if it is a total number of years for one certain investigator or a combined total of all investigators.

C. An investigator shall, prior to advertising a certification designation, must furnish the Board of Private Investigators with a copy of their certificate and the certificate number.

D. When using the term certification in advertising, the certified investigator's name must accompany the designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 21: (June 1995).

Gary Hyatt
Chairman

9506#021

RULE

**Department of Public Safety and Corrections
Office of State Police**

Video Draw Poker (LAC 42:XI.Chapter 24)

The Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division in compliance with, and under authority of R.S. 49:950 et seq., and R.S. 33:4862.1 et seq., hereby adopts, repeals, and amends the rules and regulations pertaining to the operations of video draw poker devices and the regulation and licensing of manufacturers, distributors, owner/operators, service entities, and other participants in the video draw poker industry in Louisiana.

The full text of this final rule was published as a notice of intent on pages 307 - 323 of the March 20, 1995, *Louisiana Register*.

Col. Paul W. Fontenot
Deputy Secretary

9506#039

RULE

Department of Social Services Office of Community Services

Central Registry—Child Abuse/Neglect Cases (LAC 67:V.1103)

The Department of Social Services, Office of Community Services, is amending the rule entitled "Central Registry—Child Abuse/Neglect Cases."

This rule is mandated by proposed revisions to policy regarding the State Central Registry in order to comply with the provisions of 31 USC §6503.

Title 67

SOCIAL SERVICES

Part V. Office of Community Services

Subpart 3. Child Protective Services

Chapter 11. Administration and Authority

§1103. State Central Registry

A - A.1 ...

a. The Office of Community Services will not maintain records of reports of child abuse or neglect on families or out-of-home caretakers determined to be inherently improbable or false as provided in Article 615 (B)(5) and (6), however, this action shall not take effect until the three-year record retention period required by federal law for audit purposes has expired, counting from the month and year of the final finding. During the three-year record retention period, such records shall be sealed and accessible only to the financial auditors.

b. Records of reports of suspected child abuse or neglect in which the determination is made that the reports appear to be justified will be maintained until the youngest child in the victim's family reaches the age of 18. When, after the investigation, the determination is made by the department that the report does appear to be justified, any subsequent adjudication by a court exercising juvenile jurisdiction which dismisses the child in need of care petition involving this report shall be added to the central registry. Records of reports of child fatalities determined to have been caused by child abuse or neglect will be maintained for 20 years. Records on determinations on caretakers in restrictive care facilities and day care centers in which reports appear to be justified will be maintained for five years, unless there is another justified finding involving the same perpetrator. In those cases the records will be maintained until there has been no subsequent justified finding for five years. Records on justified findings on foster families, when the child victim is a foster child, will be maintained indefinitely.

c. Any person whose name is included on the central registry may file a rule to show cause against the Department of Social Services in the court exercising juvenile jurisdiction in the parish in which the investigation was conducted to show why the information on file should not be expunged. The Office of Community Services will expunge the petitioner's name and other identifying information upon receipt of a court order to do so. Any expungement order issued by a court

shall not take effect as to nonidentifying statistical information on file until the three-year record retention period required by federal law for audit purposes has expired, counting from the month and year of the final finding. During the three-year record retention period, such records bearing the nonidentifying statistical information shall be sealed and accessible only to the financial auditors.

* * *

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Children's Code, Title VI, Child in Need of Care, Chapter 5, Articles 615 and 616, and Title XII, Adoption of Children, Chapter 2, Article 1173, and R.S. 14:403(H).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 18:79 (January 1992), amended LR 20:198 (February 1994), LR 21: (June 1995).

Gloria Bryant-Banks
Secretary

9506#047

RULE

Department of Social Services Office of Rehabilitation Services

Grant Policy (LAC 67:VII.Chapter 17)

In accordance with the provisions of R.S. 49:953, the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) has adopted a new Grant Policy.

The purpose of this rule for the Louisiana Rehabilitation Services' Grant Policy is to ensure uniformity in grants administration.

Title 67

SOCIAL SERVICES

Part VII. Louisiana Rehabilitation Services

Chapter 17. Grant Policy

§1701. Grant Program Policy Manual

LRS Grant Policy Manual, fiscal year 1995, provides uniform requirements for the Administration of Louisiana Rehabilitation Services (LRS) grants and the principles for determining costs applicable to activities assisted by LRS grants for grants to institutions of higher education, hospitals, nonprofit organizations, and state and local government.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1703. Federal Financial Participation

A. The total federal financial participation in expenditures for construction of facilities for community rehabilitation program purposes for each year can not exceed 10 percent of LRS's allotment of Section 110 Funds for that year.

B. For each fiscal year, LRS' expenditures for rehabilitation services under the state plan, other than for construction and establishment of community rehabilitation

program facilities, will at least equal the expenditures for vocational rehabilitation services for the second prior fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1705. Community Rehabilitation Program

A community rehabilitation program is a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

1. medical, psychiatric, psychological, social, and vocational services that are provided under one management;
2. testing, fitting, or training in the use of prosthetic and orthotic devices;
3. recreational therapy;
4. physical and occupational therapy;
5. speech, language, and hearing therapy;
6. psychiatric, psychological, and social services, including positive behavior management;
7. assessment for determining eligibility and vocational rehabilitation needs;
8. rehabilitation technology;
9. job development, placement, and retention services;
10. evaluation or control of specific disabilities;
11. orientation and mobility services for individuals who are blind;
12. extended employment;
13. psychosocial rehabilitation services;
14. supported employment services and extended services;
15. services to family members if necessary to the vocational rehabilitation of the individual;
16. personal assistance services; and
17. services similar to the services described in paragraphs 1-16 of this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1707. General Provisions

LRS will accept solicited and unsolicited grant proposals from institutions of higher education, hospitals, nonprofit organizations, and state and local governments for the establishment of Community Rehabilitation Program Facilities and construction of Community Rehabilitation Program Facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1709. Establishment of Community Rehabilitation Program Facilities

A. Federal financial participation is available in expenditures for the establishment, development, or

improvement of a public or nonprofit community rehabilitation program for the following types of expenditures:

1. The establishment, development, or improvement of a public or nonprofit community rehabilitation program.

2. Staffing, if necessary to establish, develop, or improve a community rehabilitation program for a maximum period of four years, with federal financial participation available at the applicable matching rate for the following levels of staffing costs:

- a. 100 percent of staffing costs for the first year;
- b. 75 percent of staffing costs the second year;
- c. 60 percent of staffing costs the third year; and
- d. 45 percent of staffing costs the fourth year.

3. Other start-up expenditures related to the establishment, development, or improvement of a community rehabilitation program that are necessary to make the program functional or increase its effectiveness not including operating expenditures of the program.

B. Federal financial participation is available in expenditures for the establishment of a facility for community rehabilitation program purposes for the following types of expenditures:

1. the acquisition of an existing building, and if necessary the land in connection with the acquisition, if the building has been completed in all respects for at least one year prior to the date of acquisition and the federal share of the cost of the acquisition is not more than \$300,000;

2. the remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

3. the expansion of an existing building, provided that:

- a. the existing building is complete in all respects;
- b. the total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;
- c. the expansion is joined structurally to the existing building and does not constitute a separate building; and
- d. the costs of the expansion do not exceed the appraised value of the existing building;

4. architect's fees, site survey, and soil investigation, if necessary in connection with the acquisition, remodeling, alteration, or expansion of an existing building; or

5. the acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

C. Funds made available to a private nonprofit agency for the establishment of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the state unit in making direct expenditures for similar purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1711. Construction of Community Rehabilitation Program Facilities

A. Federal financial participation is available in

expenditures for the construction of a facility for community rehabilitation program purposes for the following types of expenditures:

1. acquisition of land in connection with the construction of a new building for a community rehabilitation program;
2. acquisition of existing buildings;
3. remodeling, alteration or renovation of existing buildings;
4. construction of new buildings and expansion of existing buildings;
5. architect's fees, site surveys, and soil investigation, if necessary, in connection with the construction project;
6. initial fixed or movable equipment of any new, newly acquired, newly expanded, or newly renovated buildings that are to be utilized for community rehabilitation program purposes; and
7. other direct expenditures appropriate to the construction project, except costs of off-site improvements.

B. The amount of federal financial participation in the construction of a rehabilitation facility may not be more than 50 percent of the total cost of the project.

C. Funds made available to a private nonprofit agency for the construction of a rehabilitation facility must be expended by that agency in accordance with procedures and standards equivalent to those of the state unit in making direct expenditures for similar purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1713. Financial Administration

Standards for Financial Management Systems. A grantee must expand and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures must be sufficient to:

1. Permit preparation of reports required by LRS and the statutes authorizing the grant.
2. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.
3. The financial management system of the grantee must also meet the following standards:

a. **Financial Reporting.** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant.

b. **Accounting Records.** Grantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

c. **Internal Control.** Effective control and accountability must be maintained for all grant cash, real and personal property, and other assets. Grantees must adequately

safeguard all such property and must assure that it is used solely for authorized purposes.

d. **Budget Control.** Actual expenditures or outlays must be compared with budgeted amounts for each grant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

e. **Allowable Cost.** Applicable OMB cost principles applicable state laws and regulations, agency program regulations, and the terms of grant agreement will be followed in determining the reasonableness, allowability, and allocability of costs.

f. **Source Documentation.** Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and grant award documents, etc.

g. **Cash Management.** Procedures for minimizing the time elapsing between the transfer of funds from the state treasury and disbursement by grantees must be followed whenever advance payment procedures are used.

4. LRS may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1715. Payment Requirements

A. If progress and/or completion of services are provided to the satisfaction of LRS, payments are to be made as specified in the contract agreement, stipulating rate or standard of payment, billing intervals, and invoicing provisions.

B. Withholding of Payments

1. Payments for proper charges incurred by grantees will not be withheld unless:

- a. the grantee has failed to comply with reporting requirements or,
- b. the grant is suspended.

2. Cash withheld for failure to comply with reporting requirements, but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended payment adjustments will be made in accordance with §1733.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Louisiana Rehabilitation Services, LR 21: (June 1995).

§1717. Cost Principles

Recipients shall adhere to applicable cost principles dependent on its organizational type. All project costs charged to this grant will be reasonable, necessary, allowable, and allocable according to the applicable cost principles.

Institutions of Higher Education - OMB Circular A-21

Hospitals - 34 CFR PART 74, Appendix E

Nonprofit Organizations - OMB Circular A-122
State, Local or Indian Tribal Government - OMB Circular A-87

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1719. Cost Sharing or Matching

A. Nonprofit Facilities. Cost sharing or matching means the grantees share of the costs of a grant-supported project or program. The grantee's match funds must be certified as nonfederal monies and will be required up-front in the form of a check payable to LRS. LRS will then reimburse 100 percent of the grant to the grantee.

1. Percentages of matching funds are as follows:

- a. establishment grant—21.3 percent cash match is mandatory;
- b. construction grant—50 percent cash match is mandatory.

B. Public Facilities. Cost sharing or matching means the grantees share of the costs of a grant-supported project or program. The grantee's match funds must be certified as nonfederal monies and set-aside (dedicated) for the grant. Only cash expended after the grant's effective date and before the expiration date will be considered as grantee's match.

1. Percentages of matching funds are as follows:

- a. establishment grant—21.3 percent cash match is mandatory;
- b. construction grant—50 percent cash match is mandatory.

2. A cost sharing or matching requirement may not be met by costs borne by another federal grant. Costs financed by general program income shall not count towards satisfying a cost sharing or matching requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1721. Program Income

Program income means gross income received by the grantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. During the grant period is the time between the effective date of the award and the ending date of the award. When authorized program income shall be retained by the recipient and used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the grant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1723. Property

Title to real property and equipment acquired under a grant shall vest, upon acquisition, in the grantee.

1. **Real Property.** Land including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

- a. The property shall be used for the originally

authorized purpose as long as needed for that purpose. When no longer so needed, approval of the director of LRS may be requested to use the property for other purposes. Use for other purposes shall be limited to projects or programs serving LRS' clients.

b. When real property is no longer to be used for the originally authorized purpose, the disposition instructions of LRS shall be followed. Those instructions will provide for one of the following alternatives:

i. The property shall be sold and LRS shall be paid an amount computed by multiplying the federal share of the property times the proceeds from sale. Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

ii. The recipient can retain title. If title is retained, LRS shall be paid an amount computed by multiplying the market value of the property by the federal share of the property.

iii. The recipient shall transfer the title to an eligible nonfederal party named by LRS.

The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the nonfederal share of the property.

2. **Equipment**

a. Tangible personal property having an acquisition cost of \$100 or more per unit.

b. Equipment shall be used by the recipient in the project or program for which it was acquired as long as needed. When no longer needed for the original project or program, the recipient shall use the equipment in other projects or programs currently or previously sponsored by LRS. When the recipient can no longer use the equipment it shall be made available to other recipients of LRS grants.

c. **Disposition of Equipment.** When equipment is no longer to be used in projects or programs sponsored by LRS, disposition of the equipment shall be made according to LRS property control procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1725. Equipment Management Requirements

Requirements for managing equipment until transfer, replacement or disposition takes place shall, as a minimum meet the following requirements:

1. Property records shall be maintained accurately. (Retention and access requirements for these records are explained in §1725).

2. For each item of equipment, the records shall include:

- a. a description of the equipment including manufacturer's model number, if any;
- b. an identification number, such as the manufacturer's serial number;
- c. identification of the grant under which the recipient acquired the equipment;
- d. information needed to calculate the federal share of the equipment;

- e. acquisition date and unit acquisition cost;
- f. location, use, and condition of the equipment and the date the information was reported; and
- g. all pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

3. A physical inventory of equipment shall be taken and the results reconciled with the property records at least once a year to verify the existence, current utilization, and continued need for the equipment. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

4. A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of equipment. Any loss, damages, or theft of equipment shall be investigated and fully documented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1727. Procurement Standard

A. Code of Conduct. The recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents.

B. The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund raising activities.

C. No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract where, to his or her knowledge, any of the following has a financial interest in that contract:

- 1. the employee, officer, or agent;
- 2. any member of his or her immediate family;
- 3. his or her partner;
- 4. an organization in which any of the above is an officer, director, or employee; and
- 5. a person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

D. The recipient shall follow the Louisiana Procurement Code for all purchases comprised of R.S. 39:1551-1771.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1729. Monitoring

A. Monitoring by Recipients. Recipients shall monitor the performance of grant supported activities. They shall review each program function, or activity to assure that adequate progress is being made towards achieving the goals of the grant. A performance report will be required quarterly to be submitted to LRS. A final performance report shall be due 30

days after the termination of the grant. The performance report shall conform to any instructions issued by LRS including:

- 1. a comparison of actual accomplishments to the goals established for the period;
- 2. the reasons for slippage if established goals were not met;
- 3. other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

B. Performance Reports Under Construction Grants. Formal performance reports shall be required only if considered necessary by LRS.

C. Significant Developments Between Scheduled Reporting Dates. Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant supported activity. In such cases, the recipient shall inform LRS as soon as the following types of conditions become known:

- 1. problems, delays or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation;
- 2. favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated.

D. Site Visits. Site visits will be made as necessary by LRS to:

- 1. review program accomplishments and management control systems;
- 2. provide such technical assistance as may be required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1731. Retention and Access Requirements for Records

A. All financial and programmatic records, supporting documents, statistical records and other records of recipients under grants shall be retained for three years after expiration date of grant.

B. Equipment Records. The retention period for the equipment records starts from the date of the equipment disposition or replacement or transfer at the direction of LRS.

C. Records for Income Transactions after Grant. LRS' requirement concerning the disposition of program income will be satisfied by applying the income to costs incurred after expiration or termination of grant support for the activity giving rise to the income. The retention period for the records pertaining to the costs starts from the end of the recipients fiscal year in which the costs are incurred.

D. Access to Record. LRS, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the grant. This includes records of subgrantees, contractors and subcontractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1733. Programmatic Changes and Budget Revisions

A. When requesting a prior approval, grantees shall address their request to the responsible LRS grants officer. Approvals shall not be valid unless they are in writing and signed by the authorized LRS official. Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision.

B. Requirements for Prior Approval:

1. Changes to Project Scope or Objectives. The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects any material change in approved space utilization or functional layout shall be considered a change in scope.)

2. Changes in Key People. The recipient of a grant shall obtain prior approval:

a. To continue the project during any continuous period of more than three months without the active direction of an approved project director.

b. To replace the project director (or any other persons named and expressly identified as key project people in the grant) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant was awarded.

3. Other Programmatic Changes. The following shall require prior approval except to the extent explicitly included in the project plan as approved by LRS at the time of the award: Transferring to a third party by contracting or other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental.

C. Budget Revisions. The recipient of a grant having an approved budget shall obtain prior approval for any budget revision which will:

1. involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs;

2. involve transfer of amounts previously budgeted between budget categories;

3. result in a need for the award of additional funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1735. Contract Provisions

A. All contracts shall contain sufficient provisions to define a sound and complete agreement.

B. Contracts shall contain suitable provisions for termination by Louisiana Rehabilitation Services.

C. Audit Requirements. Circular A-128 - *Audits of State and Local Governments*; Circular A-133 - *Audits of Institutions of Higher Education and other Nonprofit Institutions*.

D. The grantee shall furnish LRS with three copies of an audit covering funds awarded under this contract. Such audit shall be conducted by an independent certified public accountant or the legislative auditor of the State of Louisiana. The audit shall be conducted with generally accepted auditing

standards contained in the *Governmental Auditing Standards - Standard for Audit of Government Organizations Programs Activities and Functions*, issued by the United States General Accounting Office; P.L. 98-502 (Single Audit Act of 1984), the provisions of the Office of Management and Budget Circular A-128, *Audits of State and Local Government*. Nonprofit organizations should refer to the Office of Management and Budget Circular A-133. The audit shall be sent within 30 days after the completion of the audit, but no later than six months after the termination of the grant/contract.

E. Federal Assurances. Grants contracts for construction, alteration, and/or repair in excess of \$2,000 must comply with the requirements of the Davis Bacon Act. (40 U.S.C. §276 A-7)

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1737. Insurance

Recipients shall observe LRS's requirements and practices with respect to bonding and insurance as specified in contract agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

§1739. Grant Closeout

A. Each grant shall be closed out as promptly as is feasible after termination. In closing out grants, the following shall be observed:

1. Upon request LRS shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

2. The grantee shall immediately refund any unobligated balance of cash advance to the grantee.

3. The grantee shall submit within 30 days of the date of termination, an financial, performance, and other reports required by the terms of the grant.

B. The closeout of a grant does not affect the retention period for, or LRS's rights of access to grant records. If a grant is closed out without audit, LRS retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later. The closeout of a grant does not affect the grantee's responsibilities with respect to property under §1719, or with respect to any program income for which the grantee is still accountable under §1717.

C. Violation of Terms. When a grantee has materially failed to comply with the terms of a grant, LRS may suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to LRS or given evidence satisfactory to LRS that such corrective action will be taken or until LRS terminates the grant. New obligations incurred by the grantee during the suspension period will not be allowed unless LRS

expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination.

D. Termination for Cause. LRS may terminate any grant in whole or in part, at any time before the date of expiration, whenever LRS determines that the grantee has materially failed to comply with the terms of the grant. LRS shall notify the grantee in writing of the determination and the reasons for the termination together with the effective date. (All notification for termination shall be given 30 days prior to the effective termination date.)

E. Termination on Other Grounds. Grants may also be terminated in whole or in part only as follows:

1. by LRS with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

2. by the grantee, upon written notification to LRS, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated.

F. Termination Settlements. When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. LRS will allow full credit to the grantee for the federal share of the noncancelable obligations properly incurred by the grantee prior to termination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36.477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 21: (June 1995).

Gloria Bryant-Banks
Secretary

9506#059

RULE

Department of Social Services Office of Rehabilitation Services Commission for the Deaf

Policy Manual (LAC 67:VII.Chapter 3)

In accordance with the provisions of R.S. 49:953, the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) has revised the Louisiana Commission for the Deaf's rules of operation.

The purpose of this rule is to revise the rules governing Louisiana Rehabilitation Services' Commission for the Deaf rules of operation (LAC 67:VII.Chapter 3) to provide for the orderly conduct of the affairs of the commission.

Additional copies of the entire text of this revised policy manual may be obtained at Louisiana Rehabilitation Services headquarters, 8225 Florida Boulevard, Baton Rouge, LA, and at each of its nine regional offices, and at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802.

Gloria Bryant-Banks
Secretary

9506#058

RULE

Department of Social Services Office of the Secretary

Child Care Assistance Disqualification (LAC 67:I.101)

The Department of Social Services, Office of the Secretary amends the following rule in the Child Care Assistance Program effective July 1, 1995.

This rule adopts disqualification procedures for clients who receive ineligible benefits in the Child Care Assistance Program.

Title 67

SOCIAL SERVICES

Part I. Office of the Secretary

Chapter 1. Child Care Assistance Program

§101. Eligibility Requirements

A. General Requirements: Child Care and Development Block Grant and Title IV-A At-Risk Child Care

1. - 6. ...

7. Disqualification

a. Clients will be disqualified in all cases in which:

i. the client has received benefits for which he is ineligible, and

ii. the unrecoverable amount of such benefits is at least \$200, and

iii. the recovery account was established after September 30, 1994.

b. Disqualification Period

i. The disqualification shall be for a period of months equal to the unrecoverable amount divided by the total estimated monthly benefit amount.

ii. If the client is currently receiving benefits, payments are suspended if the disqualification period is three months or less. Otherwise, the case shall be closed and the client may not reapply during the disqualification period.

iii. If the client is on the waiting list, the wait shall be extended by the additional months of the disqualification period when that period is three months or less. Otherwise, the client shall be removed from the waiting list and may not reapply during the disqualification period.

iv. If the client is neither receiving benefits nor on the waiting list and subsequently reapplies and is found eligible, the case will be placed on the waiting list, with the wait extended by the additional months of the disqualification period if that period is three months or less. Otherwise, the

application is denied and the client may not reapply during the disqualification period.

B. Child Care and Development Block Grant

* * *

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1133 (October 1992), LR 18:1415 (December 1992), LR 19:1440 (November 1993), LR 20:459 (April 1994), LR 20:794 (July 1994), LR 20:899 (August 1994), LR 21: (June 1995).

Gloria Bryant-Banks
Secretary

9506#048

RULE

**Department of Transportation and Development
Office of Highways**

**Installation of Specific Services (LOGO)
Signing (LAC 70:III.Chapter 3)**

In accordance with the applicable provisions of the Administrative Procedure Act R.S. 49:950 et seq., the Department of Transportation and Development amends the rule entitled "Installation of Specific Services (LOGO) Signing," in accordance with R.S. 48:274.1.

Title 70

TRANSPORTATION

Part III. Office of Highways

Chapter 3. Installation of Specific Services (LOGO)

Signing

§303. Definitions

A. ...

* * *

Contractor-Managed Program—a specific services (LOGO) program in which a person, firm or organization selected through the public bid process by the department administers, markets, constructs, refurbishes and maintains all existing and future specific services (LOGO) signs.

Department of Transportation and Development Managed Program—a specific services (LOGO) program in which the department conducts every phase, including marketing, construction, refurbishing and maintenance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.1

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 19:352 (March 1993), amended by the Department of Transportation and Development, Office of Highways, LR 21: (June 1995).

§307. Criteria for Specific Information Permitted

A. - C.1.a. ...

b. vehicle services of fuel (unleaded, diesel, or

alternative fuels intended for use in motor vehicles), oil and water for batteries and/or radiators;

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 19:352 (March 1993), amended by the Department of Transportation, Office of Highways, LR 21: (June 1995).

§313. Fees and Agreements

A. DOTD-Managed Program. The annual fee and service charges for each business sign shall be established by the department as stipulated on the permit application.

1. - Figure 5. ...

B. Contractor-Managed Program

1. The department may select through the public bid process a person, firm or organization to administer, market, construct, refurbish and maintain all existing and future specific services (LOGO) signs.

2. Maximum annual fees and service charges for each business sign shall be established by the department in its contract with the manager.

3. The contract manager will invoice participating businesses and remit all monies collected to the department to be distributed according to the terms and conditions of the contract.

4. The department shall not be responsible for damages to business signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), etc. requiring repair or replacement.

5. Businesses shall submit applications for future signs and renewals to the contractor-manager.

6. No business sign shall be displayed which, in the opinion of the department, does not conform to department's standards, is unsightly, badly faded, or in a substantial state of dilapidation. The contractor-manager shall remove, replace, or mask any such business signs as appropriate.

7. The contractor-manager shall provide ordinary initial installation and maintenance services as provided for in the contract.

8. The contractor-manager shall notify businesses which do not meet minimum criteria as defined in §307 that deficiencies must be corrected in 30 days. If compliance is not achieved, contractor-manager must remove offending sign.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:274.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, LR 19:352 (March 1993), amended by the Department of Transportation and Development, Office of Highways, LR 21: (June 1995).

Jude W. P. Patin
Secretary

9506#038

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Coinsurance for Non-Use of PPO

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, notice is hereby given that the Board of Trustees has amended the plan document as follows.

The purpose, intent, and effect of these amendments are to change the coinsurance level to 50 percent for use of a non-PPO when the service is available from a PPO in the region where the service is provided.

The board has amended the plan document of Benefits for the State Employees Group Benefits Program, effective July 1, 1995, in the following particulars:

AMENDMENT NUMBER ONE

In the SCHEDULE OF BENEFITS, under the headings COMPREHENSIVE MEDICAL BENEFITS, Percentage Payable after Satisfaction of Applicable Deductibles and in the footnotes thereto, change 70 percent/70 percent to 50 percent/50 percent in each and every instance.

AMENDMENT NUMBER TWO

Subparagraph (b) of Paragraph 2, entitled Out-of-Pocket Expenses, in Article 3, Section I, Subsection A, is amended to read:

2. Out-of-Pocket Expenses - the sum of

(a) ...

(b) 50 percent of all such eligible medical expenses which exceed the deductibles for that calendar year and for which benefits were paid at 50 percent;

(c) - (d) ...

AMENDMENT NUMBER THREE

Paragraph 1 of Article 3, Section I, Subsection C, entitled Benefits for Eligible Medical Expenses, is amended to read:

1. Fifty percent of the first \$5,000 of eligible expenses incurred with non-PPO providers in an area where PPO contracts are in force and can provide the needed medical service or dispense the prescription drug;

AMENDMENT NUMBER FOUR

Paragraph 2 of Subsection B in Article 3, Section X, entitled Preferred Provider Programs, is amended to read:

2. If a non-PPO provider is used in an area where there are PPO providers of the same service, then the plan member is reimbursed 50 percent of the eligible expenses. If there is no PPO provider...made to plan member.

James R. Plaisance
Executive Director

9506#026

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Cost Assessment and Allocation

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, and pursuant to the authority granted by R.S. 42:874(A)(10)(b), notice is hereby given that the Board of Trustees has adopted the following cost assessment and allocation:

Costs of \$24,634,446 for the fiscal year July 1, 1995 - June 30, 1996 are assessed to all employee/retiree members of the State Employees Group Benefits Program who are enrolled for health coverage under the comprehensive medical indemnity plan of the state or in a health maintenance organization with which the Board of Trustees has contracted, such costs to be allocated on a prorata basis in accordance with the classification of coverage for which the employees/retiree members are enrolled.

A complete list showing the amount of the allocation for each employee/retiree member in each class of coverage is available from the offices of the State Employees Group Benefits Program, 5825 Florida Boulevard, Baton Rouge, LA 70804.

The assessment is to be collected in the same manner as premiums for health coverage.

James R. Plaisance
Executive Director

9506#029

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Credit of HMO Deductibles

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, notice is hereby given that the Board of Trustees has adopted the following administrative policy.

The purpose, intent, and effect of this policy is to credit deductible and copay amounts met during the first six months of the calendar year by HMO members who transfer into the

State Employees Group Benefits Program indemnity plan on July 1.

The board has adopted the following administrative policy applicable to members of a health maintenance organization (HMOs) who elect, during the annual open enrollment period, to transfer from a HMO with which the board has contracted to the State Employees Group Benefits Program indemnity plan on July 1:

"Members of a health maintenance organization (HMO) with which the board has contracted who elect, during the annual open enrollment period, to transfer to the State Employees Group Benefits Program indemnity plan on July 1 receive credit for deductible and copayment amounts met with the HMO during the first six months of the calendar year in which the transfer is made."

James R. Plaisance
Executive Director

9506#027

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Dental Surgery Procedures

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, notice is hereby given that the Board of Trustees has amended the plan document as follows.

The purpose, intent, and effect of this amendment is to eliminate as eligible expenses all procedures in the schedule of dental surgical benefits other than the excision of impacted teeth.

The board has amended the plan document of benefits for the State Employees Group Benefits Program, effective July 1, 1995, in the following particulars:

Subsection A of Article 3, Section V, entitled Dental Surgical Benefits, is amended to read:

V. DENTAL SURGICAL BENEFITS

A. When disease, illness, accident or injury requires the covered person to undergo excision of one or more impacted teeth, and the procedure is performed by a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) while this coverage is in force as to such person, the program will pay the eligible expense actually incurred for professional charges for such surgical procedure, including the usual pre-operative and post-operative care, not to exceed the maximum amount payable for the procedure as allowed by the

fee schedule. No other dental surgical expense will be considered eligible under this provision.

Subsection B is unchanged.

Subsection C is deleted.

James R. Plaisance
Executive Director

9506#028

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Prescription Drug Deductible

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, notice is hereby given that the Board of Trustees has amended the plan document as follows.

The purpose, intent, and effect of this amendment is to increase the calendar year deductible for prescription drugs, surgical and medical supplies to \$150, and to make such deductible separate from the calendar year deductible for other eligible expenses.

The board has amended the plan document of benefits for the State Employees Group Benefits Program, effective July 1, 1995, in the following particulars:

In the SCHEDULE OF BENEFITS, under the headings COMPREHENSIVE MEDICAL BENEFITS, Deductibles, delete:

"Prescription drugs, surgical supplies and medical supplies (in addition to Calendar Year Deductible) \$100 (Not subject to Family Unit Maximum or annual stop-loss)" and insert in lieu thereof:

"Prescription drugs, surgical supplies, and medical supplies (In addition to and separate from Calendar Year Deductible) \$150 (Not subject to Family Unit Maximum or annual stop-loss)"

James R. Plaisance
Executive Director

9506#034

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Surviving Spouses and Dependents

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C)

and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, notice is hereby given that the Board of Trustees has amended the plan document and administrative policy as follows.

The purpose, intent, and effect of these amendments are:

1. To allow surviving spouses and surviving dependent children to continue coverage under the State Employees Group Benefits Program even in the event that the surviving spouse is covered by another group plan.

2. To allow the state to pay up to 50 percent of the premium costs on behalf of surviving spouses and dependent children.

The board has amended the plan document of benefits for the State Employees Group Benefits Program and its administrative policy, effective July 1, 1995, in the following particulars:

AMENDMENT NUMBER ONE

Article 1, Section III, Subsection F is amended to read as follows:

"F. Continued coverage for surviving dependents' benefits under this contract for covered surviving dependents of a deceased covered employee or retiree shall terminate at the end of the month during which the employee's or retiree's death occurs, unless the surviving covered dependents elect to continue coverage. It shall be the responsibility of the participant employer or surviving covered dependent to notify the program within 60 days of the death of the employee or retiree and the program shall notify the surviving dependents of their right to continue coverage.

Application for continued coverage must be made in writing to the program within 60 days of receipt of notification and premium payment must be made within 45 days of the date the continuation option is exercised for coverage retroactive to the date coverage would have otherwise terminated.

Coverage for the surviving spouse under this Section III (F) will continue until the earliest of the following events occurs:

1. failure to pay the applicable premium;
2. death of the surviving spouse.

Coverage for a surviving dependent child under this Section III (F) will continue until the earliest of the following events occurs:

1. failure to pay the applicable premium;
2. coverage as an employee under any group health plan, except as provided under Article 1, Section III (K) (4);
3. 36 months beyond the date coverage would otherwise have terminated under the provisions of Article 1, Section I (1)(2) and (3), or Article 1, Section I (J) and Article 2, Section II.

Surviving spouses and dependents shall be entitled to continue to receive the same premium contributions as active employees and retirees from the state of Louisiana."

AMENDMENT NUMBER TWO

The provisions of Article 1, Section III, Subsection K, Paragraph 5 are deleted.

AMENDMENT NUMBER THREE

Article 1, Section III, Subsection K, Paragraph 4 is amended to read as follows:

"4. Effective January 1, 1990, if a covered person under this plan, other than a surviving spouse or surviving dependent children, becomes covered under another group health plan and the latter plan contains a pre-existing condition limitation or exclusion with respect to a medical condition such covered person may continue coverage under this plan AT HIS OR HER OWN EXPENSE, until such time as he or she would no longer qualify for benefits under the applicable provisions of Article 1 Section III (E) (F) (G) or (H) or, if earlier, until such time as the pre-existing condition limitation or exclusion under the latter health plan no longer applies. The covered person shall furnish to the program any information that may be required to document the provisions of any pre-existing condition limitation."

AMENDMENT NUMBER FOUR

Article 1, Section III, Subsection C, Paragraph 1 is amended to read as follows:

"C. Surviving Dependents

Benefits under this contract for covered dependents of a deceased covered employee shall terminate at the end of the calendar month in which the employee's death occurred unless the surviving covered dependents elect to continue coverage. Application for such continued coverage must be made within 60 days following the covered employee's death.

1. The surviving legal spouse of an active or retired employee may continue coverage until the spouse's remarriage."

AMENDMENT TO ADMINISTRATIVE POLICY

The following administrative policy will apply to any surviving spouse and surviving dependents who have previously been denied coverage solely because they were covered by another employer sponsored group health plan:

"Any surviving spouse or surviving dependents (of a covered plan member) who have previously been denied coverage solely because of coverage under another employer sponsored health plan shall be permitted to make application for continued coverage within the first six months following the effective date of the plan document amendments allowing surviving spouses and surviving dependent children to continue coverage under the State Employees Group Benefits Program even in the event that the surviving spouse is covered by another group plan."

James R. Plaisance
Executive Director

9506#035

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Treatment of TMJ

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C) and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, notice is hereby given that the Board of Trustees has amended the plan document as follows.

The purpose, intent, and effect of these amendments are to provide a \$600 lifetime benefit for splint therapy for treatment of Temporomandibular Joint Syndrome (TMJ) which will include the cost of one initial x-ray; and to further provide that any surgical treatment for TMJ must be approved on an individual basis upon a showing that splint therapy was tried but not successful.

The board has amended the plan document of benefits for the State Employees Group Benefits Program, effective July 1, 1995, in the following particulars:

AMENDMENT NUMBER ONE

Add Paragraph 35 to Article 3, Section I, Subsection F, entitled Eligible Expenses, as follows:

35. Splint therapy for the treatment of Temporomandibular Joint Dysfunction (TMJ), limited to a lifetime benefit of \$600 to include the cost of a splint and the initial panorex x-ray only.

Surgical treatment for TMJ shall be eligible for benefits only following a demonstrated failure of splint therapy and only upon specific case-by-case approval by the program.

AMENDMENT NUMBER TWO

Add Subsection MM to Article 3, Section VIII, entitled Exceptions and Exclusions for all Medical Benefits, as follows:

MM. Any treatment for a diagnosis of Temporomandibular Joint Dysfunction (TMJ), except those benefits specifically delineated in Article 3, Section I, 35.

James R. Plaisance
Executive Director

9506#036

RULE

Department of Treasury Board of Trustees of the State Employees Group Benefits Program

Well Baby Care Expenses

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 42:871(C)

and 874(A)(2), vesting the Board of Trustees with the sole responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, notice is hereby given that the Board of Trustees has amended the plan document as follows.

The purpose, intent, and effect of this amendment is to subject all well baby care expenses to the baby's own deductible and coinsurance reimbursement levels.

The board has amended the plan document of benefits for the State Employees Group Benefits Program, effective July 1, 1995, in the following particulars:

Paragraph 27 of Article 3, Section I, Subsection F, entitled Eligible Expenses, is amended to read:

27. Well-baby care expenses, including facility and professional charges (subject to the fee schedule and exclusions for noncovered items) ...

James R. Plaisance
Executive Director

9506#037

RULE

Department of Wildlife and Fisheries Office of Fisheries

Tilapia Importation, Culture, Possession and Disposal (LAC 76:VII.903)

The secretary of the Department of Wildlife and Fisheries does hereby amend the rule governing the importation, culture, possession, and disposal of tilapia in Louisiana.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 9. Aquaculture - Exotic Species

§903. Tilapia

A. Rules and Regulations on Importation, Culture, Possession and Disposal of Tilapia in Louisiana. The following terms shall have the following meaning in this Section.

* * *

Department—the Louisiana Department of Wildlife and Fisheries or an authorized employee of the department.

* * *

Process—the act of chill killing tilapia in an ice slurry for a period of not less than 60 minutes.

* * *

Secretary—the secretary of the Louisiana Department of Wildlife and Fisheries.

* * *

G. Rules for the Processing of Tilapia

1. All tilapia and tilapia parts other than live tilapia specifically permitted by the department must be properly processed and killed prior to leaving the tilapia culture facility.

2. All tilapia, other than live tilapia specifically permitted by the department, being brought into the state from without the state must be dead.

3. Records shall be kept of all tilapia processed at a culture facility and shall include the following information:

- a. species;
- b. processed pounds;
- c. date processed;
- d. name of processor;
- e. buyer of processed fish.

4. A copy of this information shall be sent to the department's Baton Rouge office at the end of each year, or at anytime upon the request of department officials.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:318 and 56:319.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Office of Fisheries, LR 17:804 (August 1991), amended LR 20:1022 (September 1994), LR 21: (June 1995).

Joe L. Herring
Secretary

9506#005

NOTICES OF INTENT

NOTICE OF INTENT

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, notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters is hereby amending Part XXI of the Louisiana Administrative Code. 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:

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 in LR 21:

Interested persons may submit written or oral comments to Gay M. Pilié, Executive Director, Board of Examiners of Certified Shorthand Reporters, 325 Loyola Avenue, Suite 306, New Orleans, LA 70112, (504) 523-4306. Comments will be accepted through the close of business on July 20, 1995.

Gay M. Pilié
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Certification;
Continuing Education

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There will be a one time cost of \$100 to the certified shorthand reporters' board to publish the rule in the *Louisiana Register*.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
An average of three people per year apply for certification with a national certificate that live outside of Louisiana. The cost to be certified is \$75. Since the board will no longer certify anyone not domiciled in Louisiana with a national certificate, the board's revenue will decrease approximately \$225 a year.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**
This rule will benefit the Louisiana reporter since out-of-state reporters will not be able to work in Louisiana with a national certificate. Louisiana courts and lawyers will have to hire reporters that are certified with a Louisiana certificate.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no anticipated effect on competition or employment due to the proposed rule.

Gay Pilié
Executive Director
9506#040

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

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 advertising, 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.

Interested persons may submit written comments until 4:30 p.m., August 9, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

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

Carole Wallin
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Hiring
Noncertified School Personnel**

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

The adoption of this proposed rule will cost the Department of Education approximately \$600 (printing and postage) to disseminate the policy.

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$200. Funds are available.

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

The proposed rule will have no effect on revenue collection.

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

There will be no costs to directly affected persons or nongovernmental groups. The requirement of an outline of course work prescribed for certification will ensure that individuals employed under the provisions of this policy will enroll in the appropriate courses.

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

This action provides school systems greater flexibility for the first year of employment of uncertified individuals under the provisions of this policy yet strengthens the requirements for re-employment the second year.

Marlyn Langley
Deputy Superintendent
for Management and Finance
9506#052

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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 approved for advertising, 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.)

Interested persons may submit written comments on the proposed policy changes until 4:30 p.m., August 8, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9464.

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

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Temporary Teaching Assignments

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

The adoption of this proposed rule will cost the Department of Education approximately \$600 (printing and postage) to disseminate the policy.

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$200. Funds are available.

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

The proposed rule will have 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 directly affected persons or nongovernmental groups. The requirement of an outline of course work prescribed for certification will ensure that individuals employed under the provisions of this policy will enroll in the appropriate courses.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action provides school systems greater flexibility for the first year of employment of uncertified individuals under the provisions of this policy yet strengthens the requirements for re-employment the second year.

Marlyn Langley
Deputy Superintendent for
Management and Finance
9506#041

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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 approved for advertisement, 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.]

* * *

Interested persons may submit written comments until 4:30 p.m, August 9, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

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

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

Carole Wallin
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Teacher Certification**

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

The adoption of this proposed rule will cost the Department of Education approximately \$600 (printing and postage) to disseminate the policy.

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$250. Funds are available.

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

The proposed rule will have no effect on revenue collection.

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

The certificates/permits of teachers who are convicted of criminal offenses will be revoked by BESE in accordance with the proposed rule.

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

This action will eliminate the possibility of employment in local school systems for teachers whose certificates are revoked by BESE.

Marlyn Langley
Deputy Superintendent
for Management and Finance
9506#053

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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

Undesirable Levels
(LAC 33:III.Chapters 1, 7, 11, 13 and 25)
(AQ125)

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, (AQ125).

This proposed rule removes the phrase "undesirable levels" from LAC 33:III.111, LAC 33:III.701.C, LAC 33:III.1101.A and 1109.A, LAC 33:III.1303.A, and LAC 33:III.2511.E.5. This phrase has been ruled by the court to cause the aforementioned regulations to be unenforceable.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 1. General Provisions

§111. Definitions

[See Prior Text]

Delete *Undesirable Levels* and its definition.

[See Prior Text]

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 14:348 (June 1988), LR 15:1061 (December 1989), LR 17:777 (August 1991), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

Chapter 7. Ambient Air Quality

§701. Purpose

[See Prior Text in A-B]

C. Sulfur Dioxide. It is the purpose of this Subsection to establish ambient air standards and regulations for the state for sulfur dioxide.

[See Prior Text in D-H]

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 Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

Chapter 11. Control of Emissions of Smoke

§1101. Control of Air Pollution from Smoke

A. Purpose. It is the purpose of this regulation to establish emission standards on smoke.

[See Prior Text in 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 by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

§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 by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

Chapter 13. Emission Standards for Particulate Matter (Including Standards for Some Specific Facilities)

Subchapter A. General

§1303. Provisions Governing Specific Activities

A. Toxic Substances. Substances which are by nature toxic to human or animal life or vegetation may be controlled to more restrictive levels than is required for particulate matter in general.

[See Prior Text in 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 14:348 (June 1988), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:

Chapter 25. Miscellaneous Incineration Rules

Subchapter B. Biomedical Waste Incinerators

§2511. Standards of Performance for Biomedical Waste Incinerators

[See Prior Text in A-E.4]

5. All BWIs shall be designed with a stack emission point that controls to the maximum extent possible the discharge of air contaminants and which does not adversely impact air quality in the local area. All incinerator stack heights must be approved by the administrative authority.

[See Prior Text in E.6-L]

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 20:1098 (October 1994), LR 21:

A public hearing will be held on July 28, 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 AQ125. Such comments should be submitted no later than August 4, 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: Undesirable Levels**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There are no costs or savings accruing to state or local government units.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There is not any 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 costs and/or economic benefits accruing to directly affected persons or nongovernmental groups.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**
There is not any effect on competition and employment.

Gus Von Bodungen
Assistant Secretary
9506#064

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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

Land Ban (LAC 33:V.Chapter 22)(HW48)

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 Hazardous Waste Division Regulations, LAC 33:V.Chapter 22, (HW48).

This rule is being proposed to clean up already existing language and to bring the state in line with federal regulations in order to obtain 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.

A public hearing will be held on July 28, 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 HW48. Such comments should be submitted no later than August 4, 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 (504)765-0486.

Copies of this proposed regulation can be purchased at the Office of the State Register, 1051 North Third Street, Room 512, Capitol Annex Building, Baton Rouge, LA, (504)342-5015 or at the Department of Environmental Quality at the above referenced address. Contact the State Register or the Investigations and Regulation Development Division for pricing information. Check or money order is required in advance for each copy of HW48.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70605; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

James B. Thompson, III
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Land Ban**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There are no expected implementation costs or savings to state or local governments because there is no additional regulatory burden on these governmental units. This rule package simply takes federal regulations already in place and incorporates them into the state regulatory program and rewrites certain state regulations without changing their scope or meaning.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There is no effect on revenue collections of state or local governments as a result of the implementation of this rule because no new rules are being imposed.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**
No additional costs or economic benefits to directly affected persons or nongovernmental groups are expected from the implementation of this regulatory package.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**
Since the state is merely adopting rules already enacted by the federal government and the regulated community must currently abide by the federal standards, there are no effects on competition or employment.

Glenn A. Miller
Assistant Secretary
9506#049

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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 gives notice that rulemaking procedures have been initiated to amend the Water Pollution Control Division and Water Quality Management Division regulations, LAC 33:IX.Chapter 23 (WP16F).

The proposed 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 proposed rule is required in order to assume and operate the NPDES permit program.

A public hearing will be held on July 28, 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 WP16F. Such comments should be submitted no later than August 4, 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 (504)765-0486.

Copies of this proposed regulation can be purchased at the Office of the State Register, 1051 North Third Street, Room 512, Capitol Annex Building, Baton Rouge, LA, (504)342-5015 or at the Department of Environmental Quality at the above referenced address. Contact the State Register or the Investigations and Regulation Development Division for pricing information. Check or money order is required in advance for each copy of WP16F.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

James B. Thompson, III
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: LPDES Program (WP16F)

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are estimated additional costs to the state for mailing out newsletters to fulfill public notice requirements of draft permits in accordance with federal requirements. These costs will be approximately \$16,000 per year, anticipating a weekly mailout at \$0.32 per newsletter to a mailing list of approximately 1,000 persons requesting such notice.
No other implementation costs (savings) are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No effect on revenue collections by state or local government is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed regulations will benefit nongovernmental groups by reducing the number of regulatory agencies requiring permits for water discharge (from state and federal to only state), with consequent reduction in preparation of permit applications and monitoring and reporting activities. Dual but similar requirements now existing (state and federal) will be replaced by a single set of requirements (authorized state).
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect on competition or employment is anticipated.

J. Dale Givens
Assistant Secretary
9506#050

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

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 gives notice that rulemaking procedures have been initiated to amend the Water Pollution Control Division and Water Quality Management Division regulations, LAC 33:IX.711 and LAC 33:IX.Chapter 23 (WP16L).

This proposed 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.

A public hearing will be held on July 28, 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 WP16L. Such comments should be submitted no later than August 4, 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 (504)765-0486.

Copies of this proposed regulation can be purchased at the Office of the State Register, 1051 North Third Street, Room 512, Capitol Annex Building, Baton Rouge, LA, (504)342-5015 or at the Department of Environmental Quality at the above referenced address. Contact the State Register or the Investigations and Regulation Development Division for pricing information. Check or money order is required in advance for each copy of WP16L.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508.

James B. Thompson, III
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Amendments Required for NPDES Authorization (WP16L)

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

There will be no new costs. No additional savings are anticipated.

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

No effect on revenue collections by state or local government is anticipated.

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

There should be no new costs/or economic benefits to directly affected persons or nongovernmental groups. This rule requires applicants for water discharge permits to pay for publishing the public notice in the local newspaper. This is currently a requirement under the existing state permit system but it is not a requirement of the federal National Pollutant Discharge Elimination System (NPDES) program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is anticipated.

J. Dale Givens
Assistant Secretary
9506#051

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Office of the Governor Office of Veterans Affairs

Veterans' Homes Housing Policy (LAC 4:VII.957)

The Office of Veterans Affairs hereby gives notice of its intent to adopt 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 occupants 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 reflected 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. 29:254.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 21:

This proposed policy is to become effective on September 20, 1995, or upon publication in the Louisiana Register.

All interested persons are invited to submit written comments on the proposed housing policy. Such comments should be submitted no later than July 21, 1995, at 4:30 p.m., to Mr. Ernie P. Broussard, Executive Director, Office of Veterans Affairs, Box 94095, Capitol Station, Baton Rouge, Louisiana, 70804-9095.

Ernie P. Broussard
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Veterans' Homes Housing Policy**

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

There will be no implementation costs for the proposed housing policy for Louisiana State Veterans' Homes.

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

The adoption of the proposed housing policy will not affect revenue collections of state or local governmental units. The housing quarters are currently occupied by employees in the priority category as outlined in Section 6(a) and Section 6(b) of the State Veterans' Homes Housing Policy.

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

Housing granted to individuals in Section 6(a) and Section 6(b) of the State Veterans' Homes Housing Policy is considered a fringe benefit and will be included in each employee's gross income for tax purposes as required by PPM Number 73.

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

There is no estimated effect on competition and employment if the proposed policy is approved.

Ernie P. Broussard
Executive Director
9506#020

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 Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, proposes to adopt 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 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 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 consultation 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 is proposing to adopt the following rule to discontinue Medicaid reimbursement for this activity. In order to avoid federal disallowances for these activities, the bureau adopted an emergency rule effective May 1, 1995 and the cost savings shown on the fiscal and economic impact statement represent cost savings for the remainder of state fiscal year 1995.

Proposed Rule

The Bureau of Health Services Financing will not reimburse for collateral consultation in the Mental Health Rehabilitation 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 proposed rule. A public hearing will be held on this matter at 9:30 a.m., Tuesday July 25, 1995, in the DOTD Auditorium, 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. of the day of the public hearing.

Rose V. Forrest
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Mental Health Rehabilitation Services

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

It is anticipated that implementation of this proposed rule will decrease state expenditures in the Medicaid Program by \$137,228 for SFY 1994-1995, \$1,008,630 for SFY 1995-1996 and by \$1,066,269 for SFY 1996-1997.

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

Implementation of this rule will decrease federal revenue collections by \$364,518 for SFY 1994-1995, \$2,603,941 for SFY 1995-1996 and by \$2,726,931 for SFY 1996-1997.

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

The providers of mental health rehabilitation services will experience a decrease by \$501,746 for SFY 1995, by \$3,612,571 for SFY 1996, and \$3,793,200 for SFY 1997.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9506#065

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Wells in State Waterbodies (LAC 43.XIX.Chapter 2)

(Editor's Note: The Department of Natural Resources, Office of Conservation, in addition to proposing new rules, is reorganizing certain existing rules, as indicated below. The text of these existing and previously promulgated rules in Part XIX, however, remains the same and continues in effect.)

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 30:4, notice is hereby given that the Office of Conservation intends to adopt new rules governing the drilling, redrilling, workover, production, maintenance and abandonment of wells located within state waterbodies in accordance with the provisions of L.R.S. 30:1, et seq.

This new Chapter 2 shall be administered with the objective of supervising the drilling, operation, maintenance, and abandonment of wells to prevent as far as possible, waste, damage to life, health, property, and natural resources, damage to underground oil and gas deposits from infiltrating water and other causes, loss of oil, gas, or reservoir energy and damage to underground sources of drinking water and surface waters suitable for irrigation or domestic purposes by the infiltration of, or the addition of detrimental substances by reason of the drilling, operation, maintenance, or abandonment of wells.

These regulations shall apply to any and all oil and gas well operations conducted from locations within the territorial boundaries and inland lakes, bays, rivers, bayous and other waterbodies of the state of Louisiana, and where in conflict, the existing regulations shall supersede any and all previous rules, regulations, and requirements pertaining to the operations previously stated.

Title 43

NATURAL RESOURCES

Part XIX. Conservation: General Operations

Subpart 1. Statewide Order Number 29-B

Chapter 1. General Provisions

Chapter 2. Additional Regulations for Wells Located Within State Waterbodies (formerly Subpart 2, Chapter 2, Fees)

§201. General

§203. Definitions

§205. General Regulation Requirements

§207. Bonding

§209. Pollution Prevention and Control

§211. Oil Spill Contingency Plans

§213. Oil and Gas Drilling Operations

§215. Casing Program

§217. Blowout Preventer Systems

§219. Drilling Fluid Program and Drilling Fluid Surface System

§221. Oil and Gas Well-Completion Operations

§223. Oil and Gas Workover Operations

§225. Plugging and Abandonment

§227. Safety and Pollution Control

§229. Safety and Health

§231. Platforms and Structures

§233. References

Chapters 3 - 6. Reserved for Statewide Order Number 29-B.

Part XIX. Conservation: General Operations

Subpart 2. Statewide Order Number 29-Q-1

Chapter 7. Fees (formerly Subpart 2, Chapter 2, Fees)

* * *

Copies of the full text of Chapter 2 may be obtained from the Office of Conservation, Box 94275, Baton Rouge, LA 70804-9275 or through the Office of the State Register, 1051 North Third Street, Baton Rouge, LA 70802.

The commissioner of conservation will conduct a public hearing on these proposed rules at 9:00 a.m., Wednesday, July 26, 1995, in the Conservation Auditorium, located on the First Floor of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA.

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at said public hearing in accordance with R.S. 49:953.

Written comments will be accepted until 4:30 p.m., Wednesday, August 2, 1995, and should be directed to Ernest A. Burguières, III, Commissioner, Office of Conservation, Box 94275, Baton Rouge, LA 70804-9275.

Ernest A. Burguières, III
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Wells in State Waterbodies**

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.

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)

Estimated additional costs to the operators of existing wells or wells to be drilled which are located in state waterbodies is:

Bond Requirements	\$9,299,400
Form OC-B	\$ 246,575
Total Annual Cost	\$9,545,975

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Ernest A. Burguières, III
Commissioner
9506#067

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**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 gives notice that it intends to amend LAC 43:1.1501 et seq. regarding definitions and the filing of claims.

Title 43

NATURAL RESOURCES

Part 1. 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:

§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:

§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:

§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:

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than August 31, 1995, at 5 p.m., to John Waitz, Legal Division, Box 94396, Baton Rouge, LA 70804-9396 or to 625 North Fourth Street, Baton Rouge, LA 70821. Comments should reference this proposed regulation.

Jack McClanahan
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Fund Administration

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

There will be no additional cost (savings) to state and local government units. Existing staff can handle the related workload.

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

There will be no revenue collected as a result of the proposed rule change.

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

The proposed rule change only clarifies existing rules. No change is being proposed to the assessment on oil and gas and pipeline companies. There will be no increased economic benefit to legitimate Louisiana commercial fishermen. Any increased cost would be negligible (less than \$20).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment being that this rule change will only clarify existing rules.

Robert D. Harper
Undersecretary
9506#066

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Social Services Office of Family Support

Food Stamp Deduction (LAC 67:III.1962)

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

Pursuant to proposal of a provision to the 1993 Mickey Leland Childhood Hunger Relief Act, the Department is establishing 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
§1962. 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:

Interested persons may submit written comments within 30 days to the following address: Howard L. Prejean, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA, 70804-4065. He is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on July 27, 1995 in the Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 504-342-4120 (Voice and TDD).

Gloria Bryant-Banks
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Food Stamp Deduction

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

Implementation costs to state government total approximately \$319, which includes the charge for publishing this notice and final rule (approximately \$200), the printing costs for publishing an Executive Bulletin (approximately \$29 for two pages) as well as revisions to Chapter 4, Financial Assistance Manual (approximately \$90 for five two-sided pages) to inform staff about the new requirements and procedure.

Revisions will also be necessary to the following forms: Form FSP 1W, Budget Worksheet; Form OFS 4, Application for Assistance; and Form 7 CR, Change Reporting Form. These changes, however, can be made at approximately the same time that the forms reach a low stock point in the warehouse and would need to be reprinted anyway. Therefore, the implementation costs relative to forms revisions would be negligible.

The rule has no economic impact on local governmental units.

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

The proposed rule will have no effect on revenue collections.

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

Economic benefits could be realized by those persons currently making legally obligated child support payments, as these payments would be included in the deductions from their total monthly income when budgets for food stamp eligibility are determined. The child support deduction would therefore increase the benefit level of households entitled to the deduction.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposal will have no impact on competition and employment.

Howard L. Prejean
Assistant Secretary
9506#062

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Social Services
Office of Family Support

Voter Registration Services (LAC 67:III.201)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part 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:

Interested persons may submit written comments within 30 days to the following address: Howard L. Prejean, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-4065. He is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on July 27, 1995 in the Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 504-342-4120 (Voice and TDD).

Gloria Bryant-Banks
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Voter Registration Services**

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

The only implementation cost to state government is the approximate \$200 charge for publishing this notice and final rule. The rule has no economic impact on local governmental units.

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

The proposed rule will have no effect on revenue collections.

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

There are no costs or economic benefits to any persons or nongovernmental groups.

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

The proposal will have no impact on competition and employment.

Howard Prejean
Assistant Secretary
9506#061

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Social Services
Office of The Secretary**

Crisis Intervention (LAC 48:I.Chapter 89)

The Department of Social Services, Office of the Secretary, Bureau of Licensing, proposes to amend the Louisiana Administrative Code, Title 48, Part 1, Subpart 3, Licensing.

This rule is mandated by Louisiana Revised Statutes 46:1401-1424. It is the intent of these standards to assure that

crisis intervention service providers protect the treatment, safety, and well-being of children and vulnerable adults who present a behavioral and/or emotional crisis. Therefore, the Department of Social Services has developed these minimum licensing standards for crisis programs operating in this state. It is the policy of the State, through the use of these licensing standards, to insure the protection of all recipients of crisis intervention services and to encourage and assist in the improvement of these programs. It is the further intent of these standards to mandate proper training and supervision of personnel, to insure that only qualified and trained staff have direct client contact and to provide those agencies having such contact with a mechanism to be regulated.

Crisis Intervention Services provide crisis assessment, crisis de-escalation and referrals to those in emotional/behavioral crisis, which may include suicidal, homicidal, and/or severely disabling behaviors. Services may be available 24 hours a day, seven days a week and are usually staffed by crisis clinicians, social workers, and trained paraprofessionals. The service components may include, but are not limited to:

- a) identifying the need for and facilitating access to in-patient and out-patient mental health treatment services;
- b) providing one-to-one staff intervention to prevent harm to self or others;
- c) assisting in resolving acute interpersonal and family conflicts; and
- d) educating individuals and families in conflict identification and resolution strategies.

Crisis intervention services may be provided in conjunction with a number of other licensed services available to this client population. However, they are distinguished from and do not supplant those licensed services, which may include:

- a) residential care,
- b) in and out-of-home respite care,
- c) personal care attendant services,
- d) family support services,
- e) case management services, or
- f) medication management.

Crisis intervention staff provide support services to but do not replace or perform the responsibilities of parents or other primary care givers.

Copies of the full text may be viewed at the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA 70802. Interested persons may request copies as well as submit written comments on this proposed rule to Steve Phillips, Office of the Secretary, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing within 20 days after publication. The deadline date for receipt of all comments is 4:30 p.m., July 10, 1995. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance call (504) 342-4120 (voice and TDD).

Gloria Bryant-Banks
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Crisis Intervention**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There are only two known agencies that will be covered by this rule. The implementation of this rule is projected to increase state expenditures by \$900 in SFY 1995-96.
- 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 anticipated costs or economic benefit to any persons or nongovernmental unit.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**
The rule will have no impact on competition or employment.

John W. Joseph
Deputy Secretary
9506#068

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

**Department of Treasury
Louisiana 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 is amending 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. Louisiana 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 | \$ 200.00 |
| 5 to 32 units | 1,000.00 |
| 33 to 60 units | 1,500.00 |
| 61 to 100 units | 2,500.00 |
| Over 100 units | 5,000.00 |
| 2. Analysis Fee | |
| 1 to 4 units | \$ 200.00 |
| 5 to 32 units | 1,000.00 |
| 33 to 60 units | 1,500.00 |
| 61 to 100 units | 2,500.00 |
| Over 100 units | 5,000.00 |

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* \$2,500.00

*Only if applicant does not contract with independent CPA to perform cost certification audit.

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

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 19:908 (July 1993), repromulgated LR 19:1034 (August 1993), amended LR 21:

§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
Louisiana Housing Finance Agency act, R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of
Treasury, Louisiana Housing Finance Agency, LR 19:908 (July
1993), amended LR 21:

V. Jean Butler
President

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home Affordable Rental Housing Applications

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

Implementation costs are uncertain, but all such costs shall be
covered from a portion of the HOME funds.

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

It is estimated that the proposed rule will effect revenue
collections by increasing the number of transactions which
generate sales tax revenues. Rehabilitation of existing rental
developments will increase their value and thereby generate
additional property tax revenues.

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

It is estimated that the proposed rule will result in an
economic benefit to directly affected persons or
nongovernmental groups by funding housing activities for which
other federal or state resources are unavailable.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is estimated that the proposed rule will increase
employment among governmental, for profit and nonprofit
housing providers who participate in the HOME program.

V. Jean Butler
President
9506#063

David W. Hood
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Daily Take, Possession and Size Limits (LAC 76:VII.335)

The Wildlife and Fisheries Commission does hereby give
notice of intent to amend a rule (LAC 76:VII.335.A.1 and
G.1) reducing the bag limit and raising the minimum size limit
for red snapper harvested recreationally, which is part of the
existing rule for daily take, possession and size limits for Reef
Fishes set by the commission. Authority for adoption of this
rule is included in R.S. 56:6(25)(a) and 56:326.3.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

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

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

Species

Recreational Bag Limits

1. Red Snapper

5 fish per person per day

* * *

G. Species

Minimum Size Limits

1. Red Snapper

14 inches total length (commercial)

15 inches total length (recreational)

* * *

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

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

Interested persons may submit written comments on the
proposed rule to: Harry Blanchet, Marine Fisheries Division,
Department of Wildlife and Fisheries, Box 98000, Baton
Rouge, LA 70898-9000 no later than 4:30 p.m., Thursday,
August 3, 1995.

Perry Gisclair
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Daily Take, Possession
and Size Limits**

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

There will be no state or local governmental implementation costs.

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

There will be no effect on revenues to any state or local governmental units from the proposed rule.

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

Rule is intended to provide consistent regulations for recreational fishers for red snapper in state waters and in adjacent federal waters. The proposed regulation would reduce the recreational daily take limit from seven fish per day to five fish, and increases the minimum size limit from 14 inches to 15 inches (total length). This change may reduce the number of anglers making trips to harvest red snapper from state waters, thereby reducing their expenditures, and thus the economic benefits to persons dependent on these fishers for their livelihood. The dimensions of this change are not estimable at this time, due to lack of data. Direct costs to the fishermen for permits and fees would not be affected by the proposed rule.

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

This rule may provide a slight negative effect on competition or employment. Proposed rule would reduce the daily harvest limit and increase the recreational size limit for red snapper in state waters, reducing the incentives for recreational fishers to undertake fishing trips targeting this species. Some of these persons may redirect their fishing effort into other geographic areas, or into nonfishing activities. No data is presently available to estimate the dimensions of this change.

Fredrick J. Prejean, Sr
Undersecretary
9506#010

David W. Hood
Senior Fiscal Analyst

POTPOURRI

POTPOURRI

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

**State Implementation Plan (SIP) for the Inspection
Maintenance (I/M) Program**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et. seq., the secretary gives notice that the Office of Air Quality and Radiation Protection will submit the

State Implementation Plan (SIP) for the Inspection and Maintenance (I/M) Program mandated under the requirements of the 1990 Clean Air Act Amendments.

Any area in the nation designated as serious or above ozone nonattainment and having a 1980 Census-defined urbanized area population of 200,000 or more, must implement an enhanced I/M Program.

A public hearing will be held at 1:30 p.m. on Friday, July 28, 1995, in Room 326, Maynard Ketcham Building, 7290 Bluebonnet, Baton Rouge, LA. 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. Such comments should be submitted no later than 4:30 p.m., August 4, 1995 to Teri Lanoue, Air Quality Division, Box 82135, Baton Rouge, LA, 70884-2135, (504) 765-0219.

A copy of the SIP may be viewed at the Air Quality Division from 8 a.m. to 4:30 p.m., Monday through Friday, 7290 Bluebonnet, 2nd Floor, Baton Rouge, LA or the Capital Regional Office, 11720 Airline Highway, Baton Rouge, LA.

Gustave Von Bodungen, P. E.
Assistant Secretary

9506#070

POTPOURRI

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

Fee Increases (SW15)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et. seq., the secretary gives notice that the Office of Solid and Hazardous Waste, Solid Waste Division will withdraw the proposed amendments to LAC 33:VII. Chapter 5, Fee Increases, SW15. The proposed rule was submitted in order to increase the transporter fee by 100 percent, but eliminate the \$25 charge per vehicle; increase the base fees for Type I and Type II facilities by 67 percent; increase the tonnage fees for Type I and Type II facilities by 67 percent; eliminate the 75,000 ton volume limit to Type II facilities which are also Type I facilities; increase the maximum annual monitoring and maintenance fees per facility for Type I facilities to \$150,000; increase the maximum annual monitoring fees per facility for Type II facilities to \$25,000; institute a \$250 exemption request fee; and institute a \$250 generator annual report fee.

Numerous comments were received during the comment period. After reviewing the comments submitted, the Solid Waste Division would like to withdraw rulemaking on SW15. If you have any questions, please call Dennis Duszynski at (504)765-0249.

Glenn A. Miller
Assistant Secretary

9506#069

POTPOURRI

Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Claims (November, 1994)

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 48 claims in the amount of \$151,681.72 were received in the month of November 1994. Thirty-two claims were paid and five claims were denied.

Loran coordinates of reported underwater obstructions are:

27610	46921	St. Mary
27611	46916	Iberia
28558	46867	Jefferson
29053	46797	Plaquemines
27529	46920	Iberia
26631	46979	Cameron
28359	46836	Lafourche
26670	46976	Cameron
26618	46976	Cameron
27462	46916	Iberia
27567	46918	Iberia
27538	46922	Iberia
27413	46929	Iberia
27740	46884	Terrebonne
26651	46979	Cameron
28117	46831	Terrebonne
28345	46827	Lafourche
26659	46979	Cameron
26588	46980	Cameron
28591	46870	Jefferson

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

Jack McClanahan
Secretary

9506#072

POTPOURRI

Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Claims (December, 1994)

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 74 claims in the amount of \$206,337.41 were received in the month of December 1994. Eighty claims were paid and three claims were denied.

Loran coordinates of reported underwater obstructions are:

27448	46921	Iberia
27416	41952	Iberia

29053	46797	Plaquemines
27583	46971	St. Mary
26765	46980	Cameron
27589	46917	St. Mary
27775	46904	St. Mary
28212	46848	Terrebonne
2777	46871	Terrebonne
27792	46906	Terrebonne
27511	46967	Iberia
27526	46958	Iberia
27092	46948	Vermilion
27523	46922	Iberia
27600	46915	Iberia
27924	46856	Terrebonne
26957	46956	Cameron
26742	46995	Cameron
26588	46980	Cameron
28008	46843	Terrebonne
26754	46980	Cameron
26890	46965	Cameron
27104	46943	Cameron
28558	46865	Jefferson
28284	46825	Lafourche
28275	46858	Lafourche
26699	46977	Cameron
26957	46956	Cameron
27830	46874	Terrebonne
28007	46832	Terrebonne

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

Jack McClanahan
Secretary

9506#073

POTPOURRI

Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Claims (January, 1995)

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 69 claims in the amount of \$181,376.30 were received in the month of January 1995. Thirty claims were paid and eight claims were denied.

Loran coordinates of reported underwater obstructions are:

29097	46811	Plaquemines
19074	46803	Plaquemines
27880	46858	Terrebonne
27519	46929	St. Mary
29148	46986	St. Bernard

27735	46884	Terrebonne
26821	46976	Cameron
27728	46922	St. Mary
27679	46902	St. Mary
26631	46979	Cameron
27281	46943	Vermilion
27374	46945	Vermilion
26668	46977	Cameron
27951	46848	Terrebonne
28092	46835	Terrebonne
27125	46940	Vermilion
26610	46978	Cameron
26681	46979	Cameron
28667	46868	Plaquemines
28518	46853	Jefferson
28551	46868	Jefferson
27029	46951	Cameron
27921	46860	Terrebonne

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

Jack McClanahan
Secretary

9506#074

POTPOURRI

Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Claims (February, 1995)

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 33 claims in the amount of \$97,770.80 were received in the month of February 1995. Fifty-six claims were paid and six claims were denied.

Loran coordinates of reported underwater obstructions are:

26636	46979	Cameron
27753	46902	St. Mary
27780	46871	Terrebonne
27153	46943	Vermilion

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

Jack McClanahan
Secretary

9506#075

POTPOURRI

Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Claims (March, 1995)

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 40 claims in the amount of \$117,350.80 were received in the month of March 1995. Ten claims were paid and five claims were denied.

Loran coordinates of reported underwater obstructions are:

27243	46952	Vermilion
27389	46940	Vermilion
26506	46975	Cameron
27361	46940	Iberia
27870	48815	Terrebonne
18860	47037	Lake Borgne
29143	46980	St. Bernard
26675	46976	Cameron
28164	46830	Terrebonne

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

Jack McClanahan
Secretary

9506#076

POTPOURRI

Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Claims (April, 1995)

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 14 claims in the amount of \$39,363.16 were received in the month of April 1995. One claim was paid and one claim was denied.

Loran coordinates of reported underwater obstructions are:

28681	46868	Plaquemines
26525	46976	Cameron
26591	46981	Cameron
27918	46860	Terrebonne
28326	46829	Lafourche
28037	46829	Terrebonne
26672	46976	Cameron
26641	46979	Cameron

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

Jack McClanahan
Secretary

9506#077

POTPOURRI

**Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund**

Claims (May, 1995)

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that seven claims in the amount of \$27,598.83 were received in the month of May 1995. Two claims were paid and one claim was denied.

Loran coordinates of reported underwater obstructions are:

27599	46916	Iberia
26695	46977	Cameron

A list of claimants, and amounts paid, may be obtained from Martha A. Swan, Administrator, Fishermen's Gear Compensation Fund, Box 94396, Baton Rouge, LA 70804, or by telephone (504) 342-0122.

Jack McClanahan
Secretary

9506#071

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