

CONTENTS

I. EXECUTIVE ORDERS	
MJF 96-12—Governor's Military Advisory Commission	411
MJF 96-13—Flying the POW/MIA Flag Over the State Capitol	411
MJF 96-14—Procurement of Small Purchases	412
II. EMERGENCY RULES	
Agriculture and Forestry	
Agricultural Commodities Commission—Wheat Inspection (LAC 7:XXVII.Chapter 147)	414
Livestock Sanitary Board—Diseases of Animals (LAC 7:XXXI.Chapter 117)	414
Economic Development	
Economic Development Corporation—Small Business Linked Deposit Program (LAC 19:VII.Chapter 71)	415
Small Business Loan Program (LAC 19:VII.Chapter 1)	417
Education	
Board of Elementary and Secondary Education—Bulletin 1706—Exceptional Children	421
Environmental Quality	
Office of Solid and Hazardous Waste, Solid Waste Division—Waste Tire Priority System (LAC 33:VII.Chapter 105)(SW021E)	422
Governor's Office	
Division of Administration—General Travel—PPM 49 (LAC 4:V.Chapter 15)	423
Health and Hospitals	
Board of Nursing—Registration and Licensure Fees (LAC 46:XLVII.3361)	426
Office of the Secretary, Bureau of Health Services Financing—Aid to Families with Dependent Children (AFDC)—Medicaid Program	426
Case Management Services—Reimbursement	427
Direct Reimbursement to Recipients During Period of Retroactive Eligibility	429
Disproportionate Share—Hospital Payment Methodology	430
Home and Community Based Serviced Waiver Program—Mentally Retarded/Developmentally Disabled Waiver	433
Medically Needy Program	434
Reimbursement Methodology for Private Nursing Facility Services	435
Reimbursement Methodology for Private Nursing Facility Services	438
Supplemental Security Income—Medicaid Program	441
Treasury	
Bond Commission—Reimbursement Contracts (LAC 71:III)	442
Wildlife and Fisheries	
Office of Fisheries—Freshwater Mussel Harvest (LAC 76:VII.161)	444
Wildlife and Fisheries Commission—Red Snapper Commercial Size Limit (LAC 76:VII.335)	445
III. RULES	
Economic Development	
Board of Examiners of Certified Shorthand Reporters—Disclosure (LAC 46:XXI.1105)	445
Office of Commerce and Industry—Enterprise Zone Program (LAC 13:I.Chapter 9)	445
Education	
Board of Elementary and Secondary Education—Bulletin 1196—School Food Service Manager Certification	452
Bulletin 1196—School Food Service Severe Need Breakfast Program	452
Technical College System Refund Policy (LAC 28:I.1523)	453
Environmental Quality	
Office of Air Quality and Radiation Protection, Air Quality Division—Storage of Volatile Organic Compounds (LAC 33:III.2103)(AQ137)	453
Health and Hospitals	
Office of Public Health—Bacteriological Laboratory Certification	455
Office of the Secretary—Informed Consent—Maternity and Related Cases (LAC 48:I.2305)	456
Bureau of Health Services Financing—Mental Health Rehabilitation	456
Public Safety and Corrections	
Board of Private Investigator Examiners—Apprentice Licensing (LAC 46:LVII.512)	459
Revenue and Taxation	
Excise Taxes Division—Sale and Use of Dyed Special Fuels (LAC 61:I.Chapter 33)	460

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IV. NOTICES OF INTENT

Agriculture and Forestry

Livestock Sanitary Board—Brucellosis Eradication—Approved Vaccine (LAC 7:XXI.11734-11737) 462

Education

Board of Elementary and Secondary Education—Bulletin 746—Business and Office Education 463

Bulletin 746—Speech/Language/Hearing Specialists and Pathology Assistants 464

Bulletin 746—Vocational-Technical Personnel 466

Bulletin 1191—School Transportation Handbook 467

Student Financial Assistance Commission, Office of Student Financial Assistance—Agency Bylaws 468

Health and Hospitals

Board of Nursing—Registration and Licensure Fees (LAC 46:XLVII.3361) 472

Office of Public Health—Community Based and Rural Health Services (LAC 48:I.15101, 15103; and
LAC 48:V.13301, 13303) 472

Office of the Secretary, Bureau of Health Services Financing—Experimental or Investigational
Medical Procedures 476

Nursing Home Minimum Licensure Standards (LAC 48:I.Chapters 97-99) 477

Vaccines for Children 502

Labor

Office of Workers' Compensation—Compliance Penalty (LAC 40:I.109) 503

Forms (LAC 40:I.105) 503

Fraud Penalty; Hearing; Appeal (LAC 40:I.1905) 504

Public Safety and Corrections

Office of State Police—Concealed Handgun Permit (LAC 55:I.Chapter 13) 505

Revenue and Taxation

Sales Tax Division—Alternate Filing Period (LAC 61:I.4351) 512

Motion Picture Rental Exemption (LAC 61:I.4409) 514

Nonprofit Organization Exemption (LAC 61:I.4418) 515

Rental Exemption Definitions (LAC 61:I.4301) 516

Social Services

Office of Family Support—Electronic Benefits Transfer for AFDC and Food Stamps (LAC 67:III.401) 517

Wildlife and Fisheries

Office of Fisheries—Commercial Harvest of Southern Flounder (LAC 76:VII.351) 518

Wildlife and Fisheries Commission—Recreational Harvest of Southern Flounder (LAC 76:VII.353) 519

V. COMMITTEE REPORTS

Senate

Senate Committee on Labor and Industrial Relations—Electronic Transfer (LAC 40:IV.375) 520

VI. LEGISLATION

Senate

Office of the President of the Senate—Professional and Occupational Study of Law and Rules—Senate
Resolution Number 24, 1996 Regular Session 520

VII. POTPOURRI

Natural Resources

Office of Conservation—Orphaned Oilfield Sites 521

Executive Orders

EXECUTIVE ORDER MJF 96-12

Governor's Military Advisory Commission

WHEREAS: the State of Louisiana has a vital interest in the affairs of the various military components within the state, including the federal military installations located within its borders, the national guard, and the active and retired military personnel who are domiciled in the state; and

WHEREAS: in the past, the State of Louisiana has successfully employed a coordinating body to provide a forum for these various military components and to serve as a liaison between the various military entities and representatives of civilian interests; and

WHEREAS: various situations will continue to arise which necessitate the continued use of such a coordinating body;

NOW THEREFORE I, M. J. "MIKE" FOSTER, JR., Governor of the State of Louisiana by virtue of the Constitution and laws of the State of Louisiana, do hereby recreate and re-establish the Governor's Military Advisory Commission, and do hereby order and direct as follows:

SECTION 1: The Governor's Military Advisory Commission shall be composed of at least 19 members appointed by the governor who shall serve for a term concurrent with that of the governor. Membership shall consist of the following:

A. The Adjutant General of Louisiana, or the Adjutant General's designee.

B. The chairman of the State Committee for Employer Support of the Guard and Reserve, or the chairman's designee.

C. The secretary of the Department of Economic Development, or the secretary's designee.

D. The commander of each major military installation located within the State of Louisiana, or the commander's designee.

E. Military personnel, including active and retired personnel; state and local government representatives, and citizens interested in military affairs.

In addition to the members appointed by the governor, the speaker of the House of Representatives and the president of the Senate, or their designee, shall also be members. One of the members shall be appointed chairman by the governor.

SECTION 2: The Governor's Military Advisory Commission shall meet regularly at the call of the chairman. Special meetings may also be held at any time at the call of the chairman, the governor or the secretary of the Department of Economic Development.

SECTION 3: The Governor's Military Advisory Commission shall have the following duties:

A. Provide a forum for the discussion of issues concerning the major military installations in the state and active or retired military personnel, and their families, who reside in the state.

B. Formulate goals and objectives which enhance cooperation and understanding between the military components, our congressional delegation, the communities interfacing with the military components, the general public, and state, federal and local governments.

C. Strengthen the role of the state in securing defense related business for Louisiana businesses and in selling Louisiana products to military bases within the state.

D. Collect and study information related to supporting and strengthening military presence within the state.

E. Review proposed legislation on military affairs.

F. Advise the governor on measures and activities which support or enhance defense installations or military families within the state.

SECTION 4: Support staff for the Governor's Military Advisory Commission shall be provided by the Department of Economic Development. Members shall serve without compensation but may receive reimbursement, contingent upon the availability of funds, for travel and per diem expenses in accordance with state guidelines and procedures.

SECTION 5: This executive order shall be effective upon signature.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the capitol, in the city of Baton Rouge, on this 22nd day of May, 1996.

M. J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9606#005

EXECUTIVE ORDER MJF 96-13

Flying the POW/MIA Flag Over the State Capitol

WHEREAS: The Louisiana Legislature passed House Concurrent Resolution Number 6 of the First Extraordinary Session of 1991 which proclaimed that the POW/MIA flag be flown over the Louisiana State Capitol building for the three-month period of April, May and June, to honor those men and women who have been or who are prisoners of war or missing in action, and to express to them the gratitude of the citizens of the State of Louisiana.

WHEREAS: Executive Order Number BR 91-13 ordered and directed that the POW/MIA flag be flown over the Louisiana State Capitol Building until December 31, 1991; and

WHEREAS: Executive Order Number EWE 92-25 ordered and directed that the POW/MIA flag be flown over the Louisiana State Capitol Building from April 1, 1992 until January 8, 1996;

NOW THEREFORE, I, M. J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, do hereby order and direct that the POW/MIA flag shall be flown over the Louisiana State Capitol Building throughout the duration of my term as governor, as a symbol of the gratitude of the citizens of this state to all the men and women who are listed as missing in action, or who are or have been forcibly detained as a prisoner of war by our enemies. These persons have sacrificed and suffered much for their country while fighting for the cause of freedom.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22nd day of May, 1996.

M. J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9606#006

EXECUTIVE ORDER MJF 96-14

Procurement of Small Purchases

WHEREAS: the Louisiana Procurement Code, set forth in R.S. 39:1551-1771, vests the governor with the authority to prescribe procedures for the procurement of small purchases; and

WHEREAS: R.S. 39:1596 entitled "small purchases", provides that:

Any procurement not exceeding the amount established by executive order of the governor may be made in accordance with small purchase procedure prescribed by such executive order, except that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested through the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Each department, institution, board, commission, budget unit, any agency of the executive branch of state government (hereafter "agency") shall observe and be guided by specific directives regarding "small purchases" set forth in this order. As used in this order, "small purchases" means:

Any procurement not exceeding \$10,000. However, some items, regardless of price shall be considered small purchases, and are designated by each item number under Section 4(A) and 4(B). All purchases that exceed an agency's delegated authority must be forwarded to State Central Purchasing for approval. All small purchases shall be made in accordance with the following small purchase procedures.

SECTION 2: Each agency subject to this order, except those exempt under R.S. 39:1572, is authorized to purchase operating services, supplies, and equipment where the total cost does not exceed \$10,000 or the agency's delegated authority, whichever is lower, or the special delegation by the chief procurement officer. All other purchases must be requisitioned through the State Central Purchasing Agency of the Division of Administration. Any exception to this procedure shall require written permission of the chief procurement officer of State Central Purchasing. This in no way eliminates the requirement of purchasing commodities from competitive state contracts as defined in Section 3(B) in areas where those contracts exist.

SECTION 3: Each agency subject to the Louisiana Procurement Code, where the cost exceeds \$500, regardless of whether purchases are made by the State Central Purchasing Agency, an agency to which purchasing has been delegated, or agencies exempt from the State Central Purchasing Agency shall observe the following rules and regulations on small purchases, and maximum competitive bidding shall be obtained in all cases in accordance with R.S. 39:1655. This executive order in no way affects or changes (1) purchasing authority delegated to an agency by the chief procurement officer, (2) purchases from state contracts, or (3) policy and procedure memoranda.

A. Delegated Purchasing Authority - A dollar amount delegated to an agency by the chief procurement officer of State Central Purchasing.

(1) Purchases up to \$500. No competitive bidding is required.

(2) Purchases over \$500 not to exceed \$2,000 may be made by telephone or facsimile quotations solicited from at least three bona fide, prospective bidders and purchases made on the basis of the lowest responsive quotation received. Files must be documented listing persons contacted, and the terms and delivery of each bidder solicited and any special comments. Written confirmation of price should be obtained from the successful bidder.

(3) Purchases over \$2,000 but less than \$10,000 shall be made by sending facsimile or written solicitations to at least five bona fide, qualified bidders. Written solicitations for bids should be obtained in a timely fashion; however, if time does not allow for written solicitations, facsimile solicitations to at least five bona fide, qualified bidders may be obtained by allowing bids to be accepted for a five calendar day minimum period.

(a) Written solicitations or facsimile solicitations as bid in (3) above, are to be on the state's forms containing complete, competitive specifications, the quantity required, terms and conditions, delivery point and other information sufficient for a supplier to make an acceptable bid. Necessary precaution is to be implemented to keep both written and facsimile solicitations confidential until the closing time for receipt of bids. Files must be documented listing persons contacted, and the terms and delivery of each bidder solicited and any special comments.

B. State Contracts - If a competitive statewide contract exists and the amount is above the minimum order quantity,

procurement from state contract is mandatory, except agencies exempt from State Central Purchasing.

C. Labor and materials over \$5,000 that are reduced to a contract are to be submitted to the Office of State Central Purchasing to bid, except those exempted under R.S. 39:1572.

D. Printing - Agencies are hereby delegated \$500 purchasing authority to handle all their printing, including custom printing, not covered by a state printing contract or available through the Division of Administration Print Shop.

SECTION 4: Exceptions to minimum competitive requirements.

A. No competitive bidding required for the following:

(1) Parts for repairs to equipment from authorized dealer (not stocking of parts).

(2) Repairs to equipment from authorized dealer. If repairs are required for equipment from other than an authorized dealer, quotes shall be obtained by receiving telephone or facsimile quotations from at least three bona fide, qualified bidders. Prior approval from the chief procurement officer is required if in excess of \$5,000 for both authorized and non authorized repairs.

(3) Repairs to vehicles. To be in the following order:

(a) Utilize fleet management statewide maintenance and repair contract;

(b) Authorized dealer or competitive bid.

(4) Vehicle body repairs covered by insurance recovery and in accordance with insurance requirements.

(5) Livestock when purchased at public auction sale.

(6) Purchasing or selling transactions between state budget units and other government agencies.

(7) Publications and copyrighted materials when purchased directly from the publisher, or state library and libraries at colleges and universities when using subscription services.

(8) All public utilities and services provided by local government.

(9) Prosthetic devices, implantable devices, and devices for physical restoration, if not covered by state contract.

(10) Educational and related resources (except equipment) and membership in professional organizations.

(11) Purchases for clients of Blind and Vocational Rehabilitation programs which are federally funded at a rate of at least eighty percent, regulated by Title 34 of the Federal Rules and Regulations, Code of Federal Regulations Part 361, 365, 370 and 395 and in accordance with OMB Circular A-102; not covered by competitive contract.

(12) Materials and supplies for participation in promotional activities which enhances economic development with the approval of the department secretary, if not available on state contract, including booths for exhibit at conferences, seminars, and work shops.

(13) Wire, related equipment, time and material charges to accomplish adds, moves, and/or changes to telecommunications systems up to \$2,000.

(14) Working class animals trained to perform special tasks; such as but not limited to narcotics detection, bomb detection, arson investigation, rescue techniques, etc.

(15) Food, materials and supplies for home economics

courses, other teaching and training where purchasing, preparing, and serving is part of the regularly prescribed course.

(16) Shipping charges via common carrier when shipping to the United States. (International)

(17) Parcel services such as Federal Express, United Parcel Service, Airborne Express, Express Mail, etc.

(18) Termite service for subsequent year(s) contracts, where the original contract with a vendor was successfully bid.

B. Telephone or facsimile quotations from at least three bona fide, qualified bidders where feasible.

(1) Farm products which include, but may not be limited to fresh vegetables, milk, eggs, fish, or other perishable foods, when it has been determined that the market conditions are unstable and the bid process is not conducive for best pricing.

(2) Food, materials, and supplies needed for:

(a) Operation of boats and/or facilities in isolated localities where only limited outlets of such supplies are available.

(b) Juvenile detention home, and rehabilitation facilities/homes where the number of inmates, students, or clients is unstable and unpredictable.

(3) Convention and meeting facilities.

(4) Gasoline and fuel purchases unless covered by a competitive contract. Gasoline and fuel purchases in excess of \$5,000, unless covered by a competitive contract, require prior approval of the chief procurement officer.

(5) All equipment for blind operated facilities not covered by competitive state contract.

(6) Feed commodities which includes but not limited to soybean meal, cottonseed meal, oats, etc. for use on prison farms.

(7) Aircraft repairs, inspections, and modifications when performed by FAA certified mechanic and/or FAA certified repair station in accordance with FAA requirements; FAA certified aircraft parts. All must be approved by the head of the agency, head of Division of Administration Flight Operations, or their designee.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 4th day of June, 1996.

M. J. "Mike" Foster Jr.
Governor of Louisiana

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9606#030

Emergency Rules

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), LR 22:

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Agricultural Commodities Commission

Ag-Commodities—Wheat Inspection
(LAC 7:XXVII.Chapter 147)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 3:3405, R.S. 3:3406 and R.S. 3:3414.3, the Agricultural Commodities Commission finds that this emergency rule setting forth procedures related to sampling wheat is required so that Louisiana's wheat crop can be closely monitored for the existence of the fungal disease known as karnal bunt. Karnal bunt reduces wheat and barley yields, and flour made from infected kernels is discolored and has an unpleasant odor. The commission has been advised that karnal bunt has been found in the state of Arizona and that the United States Department of Agriculture (USDA) has requested the states to sample all wheat to ensure that it is clear of the disease. As a result of the discovery, USDA's Animal and Plant Health Inspection Service (APHIS) has stopped issuing phytosanitary certificates which state that karnal bunt is not found in the United States. Wheat exports are affected because 21 countries require a phytosanitary certificate from APHIS before wheat and barley may cross their borders. Failure to enact wheat sampling guidelines in a timely manner would cause imminent peril to public health, safety, and welfare of the citizens of this state and citizens of the United States in that the export market for wheat would be jeopardized.

The effective date of this emergency rule is May 16, 1996, and it shall be in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

Title 7

AGRICULTURE AND ANIMALS

Part XXVII. Agricultural Commodity Dealer and Warehouse

Chapter 147. Agricultural Commodity Commission Subchapter H. Grading; Sampling; Out-of-Condition Commodities

§14735. Elevators: Official Grades and Sampling

A. - E. . . .

F. Each grain dealer who issues grades for wheat shall retain each sample of wheat received from a producer. Samples shall be retained in separate containers and shall be retained for seven days from the date the sample was graded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3414.3, R.S. 3:3406 and R.S. 3:3405.

J. B. Broussard
Chairman

9606#011

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Livestock Sanitary Board

Diseases of Animals (LAC 7:XXXI.Chapter 117)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 3:2093, and R.S. 3:2223, the Livestock Sanitary Board finds that this emergency rule setting forth the approved vaccine to be used in the Brucellosis Eradication Program is required so that the supply of vaccine needed for the program will be readily available and vaccinations under the program can continue uninterrupted. Currently, the regulations only allow the use of Brucellosis Strain 19 Vaccine. The board has been advised that the supply of Brucellosis Strain 19 Vaccine is currently in short supply in the state and there is the possibility that it will be completely unavailable for use in the eradication program in a matter of days. The board has further been advised that there is another vaccine which is readily available for use in the Brucellosis Eradication Program and which is effective in the prevention of Brucellosis and has advantages over the Strain 19 Vaccine. Failure to vaccinate cattle or a failure to vaccinate cattle in a timely manner and the resultant breakdown of the Brucellosis Eradication Program would cause imminent peril to public health, safety, and welfare of the citizens of this state in that a major disease prevention program will be compromised.

The effective date of this emergency rule is May 14, 1996 and it shall be in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever occurs first.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 117. Livestock Sanitary Board

Subchapter B. Cattle

§11734. Brucellosis Vaccination and Fee

A. Henceforth, all non-vaccinated heifer calves between four and 12 months of age must be vaccinated with USDA approved Brucellosis vaccine prior to being sold and there is hereby established and henceforth there shall be a fee to be paid by the Louisiana livestock auction markets of \$2 for each heifer calf vaccinated for Brucellosis, which fee shall be known as the Brucellosis vaccination fee.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2221 and R.S. 3:2223.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:75 (February 1989), amended LR 22:

§11735. Livestock Auction Market Requirements

All cattle which are sold or offered for sale in livestock auction markets must meet the general requirements of LAC 7:XXI.11709 and the following specific requirements:

A. Brucellosis

1. - 3. ...

4. a. All non-vaccinated heifer calves, between four and 12 months of age, must be vaccinated with USDA approved Brucellosis vaccine prior to being sold.

4. b. - 7. b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2221 and R.S. 3:2228.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:237 (March 1985), amended LR 11:615 (June 1985), LR 12:501 (August 1986), LR 12:598 (September 1986), LR 13:556 (October 1987), LR 14:220 (April 1988), LR 14:695 (October 1988), LR 15:813 (October 1989), LR 17:30 (January 1991), LR 18:837 (August 1992), LR 22:

§11737. Governing the Sale of Cattle in Louisiana by Livestock Dealers

All cattle which are sold or offered for sale by livestock dealers must meet the general requirements of LAC 7:XXI.11711 and the following specific requirements:

A. Brucellosis

1. - 2. ...

3. a. All heifer calves between four and 12 months of age must be vaccinated with USDA approved Brucellosis vaccine, prior to being sold.

3. b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:562, R.S. 3:2221 and R.S. 3:2228.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:615 (June 1985), amended LR 12:502 (August 1986), LR 13:558 (October 1987), LR 14:221 (April 1988), LR 17:31 (January 1991), LR 18:838 (August 1992), LR 22:

Dr. Robert Mcmanus
Vice-chairman

9606#012

DECLARATION OF EMERGENCY

**Department of Economic Development
Economic Development Corporation**

**Small Business Linked Deposit Program
(LAC 19:VII.Chapter 71).**

The Department of Economic Development, Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to implement the rules of the Louisiana Small Business Linked Deposit Loan Program. This rule outlines

procedures for administering the Louisiana Small Business Linked Deposit Loan Program as authorized by Act 633 of the 1989 Legislature. This emergency rule is effective May 31, 1996 and shall remain in effect for a period of 120 days or until a final rule is promulgated, whichever occurs first.

This rule is necessary because of a recognized immediate need to assist small- and medium-sized businesses with financial assistance in the form of low interest rate loans and loan guarantees. Without this emergency rule, the public welfare is likely to be harmed as a result of likely disruptions in the efficient operation of Louisiana's capital markets, particularly for economically disadvantaged business owners and entrepreneurs who are most at risk of exclusion from the capital markets. Such market disruption would likely result from regulation-imposed bank capital constraints, as well as from the inherent risk aversion of banks, both of which will result in reduced capital investment, lower capital productivity, diminished job creation and increased risk of higher unemployment.

The proposed emergency rule is intended to mitigate the disruptions described above.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

**Subpart 6. Louisiana Small Business Linked Deposit
Loan Program**

**Chapter 71. Procedures for Authorization and
Administration**

§7101. Definitions

Corporation—the Louisiana Economic Development Corporation of the Department of Economic Development.

Eligible Lending Institution—any bank located in this state and organized under the laws of this state and any national bank having its principal office in this state which is authorized to make commercial loans and which agrees to participate in the linked deposit program as defined herein.

Eligible Small Business—any person, or business, that has all of the following characteristics:

1. is headquartered in this state;
2. maintains offices and operating facilities in this state and transacts business in this state;
3. employs fewer than 150 employees, the majority of whom are residents of this state;
4. is organized for profit;
5. is not a federally chartered or state chartered bank or savings and loan institution;
6. is not engaged in real estate purchasing, holding, renting, or leasing;
7. is not a professional business of doctors, dentists, chiropractors, certified public accountants, or attorneys.

Linked Deposit—a certificate of deposit placed by the treasurer (as defined herein) with an eligible lending institution at three percent below existing investment rates, as determined and calculated by the treasurer, provided the institution agrees to lend the value of such deposit, according to the deposit agreement required by this Section, to eligible small businesses at three percent below the existing borrowing rate applicable to each specific business at the time of the deposit of state funds in the lending institution.

Person—any individual, firm, corporation, partnership or association domiciled in this state.

Substantial Stockholders—any person who owns more than 20 percent of a business applying for or currently participating in the Link Deposit Loan Program as outlined in this Chapter.

Treasurer—the treasurer of the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7).

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 22:

§7102. Priorities

A. The corporation and treasurer shall give priority to those persons who utilize Louisiana products to the maximum extent possible.

B. The lending institution shall give priority to the:

1. economic needs of the area of the state in which the business is located;

2. the number of jobs created or preserved in the state;

3. no linked deposit shall be issued for other than a term loan and shall not be for more than the outstanding loan balance;

4. the order in which the linked deposit loan packages were received and whenever possible give priority based on this chronological order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7).

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 22:

§7103. Linked Deposit Loan Program Authorization Lending Institution requirements; Applicants Requirements and Conditions for Approval

A. The treasurer may invest in linked deposits, as provided and defined by R.S. 51:2312(A)(7), and, also defined herein, provided that at the time of placement of any linked deposit, the total amount of such investments at any one time shall not exceed, in the aggregate, \$25,000,000. When deciding whether to invest in linked deposits, the treasurer shall give priority to the investment, liquidity, and cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

B. An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small business. The eligible lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business. The eligible lending institution shall not charge, levy or collect any loan application fee, processing fee, or other charges other than its normal loan application fee, processing fee, or other charges when handling a Link Deposit application.

C. 1. Only one loan through the linked deposit program shall be made and shall be outstanding at any one time to any eligible small business.

2. The maximum amount of a linked deposit which may be made to any eligible small business at any one time shall be \$200,000.

3. No loan shall be made to any officer or director of the lending institution making the loan.

4. No loan shall be made for the sole purpose of refinancing previous debt held either by the lending institution or another lending institution. The maximum debt refinance

allowed is 25 percent of the total loan amount for any eligible small business.

5. There shall be at least a one year moratorium from the time one linked deposit matures to any new linked deposit for any eligible person or small business.

D. An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in the state. Job titles of all existing employees as well as job titles of new jobs created shall be forwarded with each application and reapplication. Whoever, knowingly files a false statement concerning such application shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in LA R.S. 14:133.

E. In considering which eligible small business to include in the linked deposit loan package for reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area of the state in which the business is located, the number of jobs to be created or preserved in the state by the receipt of such loans, and such other factors as the eligible lending institution considers appropriate to determine the relative financial need of the eligible small business.

F. The eligible lending institution shall forward to the corporation and the treasurer for review, a linked deposit loan package in the form and manner prescribed by the corporation. The package shall include such information as required by the corporation including, the amount of the loan requested, the number of jobs to be created or sustained in the state by each eligible small business, the ratio of state funds to be deposited to jobs sustained or created, and any reports, statements, or plans applicable to the business, the overall financial need of the business, and such other factors as the corporation considers appropriate. The eligible financial institution shall certify that each applicant is an eligible small business as defined herein and shall, for each eligible small business, certify the present borrowing rate applicable to each specific eligible small business. Within 45 days after receipt, the corporation shall provide written recommendations to the treasurer on each linked deposit loan package received from eligible financial institutions.

G. The treasurer may accept or reject a linked deposit loan package or any portion thereof, based on the treasurer's review of the recommendations of the corporation, the availability and amount of state funds to be deposited, and a determination of the financial soundness of the financial institution in which the deposit is to be made. The treasurer shall notify the corporation and the eligible lending institution of acceptance or rejection of a linked deposit loan package within 15 days of receipt by the treasurer of the recommendations of the corporation.

H. Upon acceptance of the linked deposit loan package or any portion thereof, the treasurer may place certificates of deposit with the eligible lending institution at three percent below the current investment rates, as determined and calculated by the treasurer. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked deposit loan package.

I. The eligible lending institution shall enter into a deposit agreement with the treasurer, which shall include the

requirements necessary to carry out the purposes of this Chapter. The requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement shall specify the period of time in which the lending institution is to lend funds upon the placement of a linked deposit, and shall include provisions for the certificates of deposit to mature within a period not to exceed one year. The treasurer may renew a certificate of deposit in one-year increments, but in no event shall the total period of time that a certificate of deposit is placed with any lending institution exceed three consecutive years. Interest shall be paid at the times determined by the treasurer. However, upon placement of a linked deposit, the treasurer will give priority to renewal of existing linked deposits prior to placement of new linked deposits. Prior to renewal of linked deposits, the treasurer shall continue to give priority to the investment, liquidity cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

J. The period of time for which each certificate of deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the linked deposit shall be used to provide loans at reduced interest rates. The agreement shall further provide that the state shall receive investment interest rates on any certificate of deposit or any portion thereof for any period of time for which there shall be no corresponding linked deposit loan outstanding to an eligible small business.

K. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to each approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed rate of interest for a period of one year which shall be three percent below the current borrowing rate applicable to each eligible small business. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with this Section in the form and manner prescribed by the treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

L. If it is discovered that there is a linked deposit made for any purpose not authorized, the certificate may be matured and/or rewritten, if appropriate, without penalty to the state treasurer. If this situation occurs, the eligible lending institution will pay the state treasury the same terms and interest rate as if the deposit were placed without benefit of a linked deposit. If the eligible lending institution fails to pledge securities to the treasurer or if such securities shall be unsatisfactory to secure the deposit, in his sole discretion, the treasurer may declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, notwithstanding any agreement or contract to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7)

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 22:

§7104. Liability

Neither the State, the corporation, nor the treasurer shall be liable to any lending institution in any manner for payment of the principal or interest on any loan to an eligible small

business under this Section. Any delay in payments or default on the part of a small business shall not in any manner affect the deposit agreement between the eligible lending institution in the event of a loan default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7)

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 22:

Brett Crawford
Executive Director

9606#003

DECLARATION OF EMERGENCY

Department of Economic Development Economic Development Corporation

Small Business Loan Program (LAC 19:VII.Chapter 1)

The Department of Economic Development, Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to promulgate emergency rules of the Small Business Loan Program effective May 31, 1996. This rule prescribes procedures for administrating the Louisiana Small Business Loan Program in accordance with Title 19, Chapter 1. This emergency rule shall remain in effect for a period of 120 days or until a final rule is promulgated, whichever occurs first.

This rule is necessary because of a recognized immediate need to assist small- and medium-sized businesses with financial assistance in the form of low interest rate loans and loan guarantees. Without these emergency rules, the public welfare is likely to be harmed as a result of likely disruptions in the efficient operation of Louisiana's capital markets, particularly for economically disadvantaged business owners and entrepreneurs who are most at risk of exclusion from the capital markets. Such market disruption would likely result from regulation-imposed bank capital constraints, as well as from the inherent risk aversion of banks, both of which will result in reduced capital investment, lower capital productivity, diminished job creation and increased risk of higher unemployment.

The proposed emergency rule is intended to mitigate the disruptions described above.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Economic Development Corporation

Subpart 1. Louisiana Small Business Loan Program

Chapter 1. Loan Policies

§101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, long-term loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of providing high levels of employment, income growth, and expanded

economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:445 (June 1989), amended LR 22:

§103. Definitions

Disabled Person's Business Enterprise—a small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans with Disabilities Act of 1990.

Minority or Women-Owned Business Enterprise—must be owned or controlled by a socially or economically disadvantaged person which is defined by the SBA as a person(s), regardless of sex or marital status, who is(are) member(s) of groups whose disadvantage may arise from cultural, racial, chronic economic circumstances or background as stated in R.S. 51:2347 et seq., and must be certified as a minority business enterprise or women's business enterprise as defined in R.S. 51:2347 B:1-6.

Small Business Concerns—as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:456 (June 1989), amended LR 22:

§105. Application Process

A. An applicant(s) applying for either a loan guaranty or a loan participation will be required first to contact a financial lending institution that is willing to entertain such a loan with the prospect of a guaranty or a participation.

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, LA R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

C. Submission and Review Policy

1. A completed Louisiana Economic Development Corporation application form, along with a complete business plan which shall contain but not be limited to the information in Appendix A, must be submitted no later than four weeks prior to the next scheduled screening committee meeting for consideration at the next scheduled board meeting of the corporation following the screening committee meeting.

2. Minority and women owned businesses applying for assistance under that provision will have to submit certification from the Minority and Women's Business Enterprise, Office of the Department of Economic Development, along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's provision shall submit adequate information

to support the disabled status.

4. The bank will submit to LEDC the complete analysis, proposed structure, and commitment letter at least two weeks prior to the next scheduled screening committee meeting for consideration at the next scheduled board meeting following the screening committee meeting. The LEDC staff may do analysis, independent of bank analysis.

5. The bank will submit to LEDC the same pertinent data that it did to the bank's loan committee, whatever pertinent data the bank can legally supply.

6. LEDC staff will review the application and analysis, then make recommendations. The staff will work with the bank on terms of the loan and LEDC loan stipulations.

7. The screening committee will review only the completed applications submitted by staff and will make recommendations to the board.

8. The applicant(s) or their designated representative, and the loan officer or a representative of the bank are encouraged to attend the screening meeting.

9. The board of directors will review all recommendations and will approve or reject the proposal.

10. The applicant will be notified within five working days by mail of the outcome of the application.

11. A LEDC commitment letter will be mailed to the bank within five working days of approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 22:

§107. Eligibility

A. Small business concerns as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

B. Small businesses whose owner(s) or principal stockholder(s) shall be a resident of Louisiana and the business is domiciled in Louisiana with preference given to certified minority businesses, women owned businesses, or businesses owned by disabled persons.

C. Funding request for all but the following may be considered:

1. restaurants, except for regional or national franchises;
2. bars;
3. any project established for the principal purpose of dispensing alcoholic beverages;
4. any establishment which has gaming or gambling as its principal business;
5. any establishment which has consumer or commercial financing as its business;
6. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;
7. funding for the principal purpose of refinancing existing debt;
8. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;
9. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:447 (June 1989), amended LR 22:

§109. General Loan Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans:

1. The corporation shall not knowingly approve any loan guarantee, loan participation or loan if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan or guarantee if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any loan or loan guaranty authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

3. The corporation shall not subordinate its position.

B. Interest Rates

1. On all loan guarantees, the interest rate is to be negotiated between the borrower and the bank but may not exceed two and one half percent above New York prime as published in the *Wall Street Journal* at either a fixed or variable rate.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding one percent.

3. The bank may apply for a linked deposit under the Small Business Linked Deposit Program on the term portion of either a guaranteed loan or a participated loan.

C. Collateral

1. Collateral-to-loan ratio will be no less than one-to-one.

2. Collateral position may be negotiated, but will be no less than a sole second position.

3. Collateral value determination:

a. the appraiser must be certified by recognized organization in area of collateral;

b. the appraisal cannot be over 90 days old.

4. Acceptable collateral may include, but not be limited to, the following:

a. fixed assets: business real estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. personal guarantees are open for negotiation; if used, there must be signed and dated personal financial statements;

d. accounts receivable with supporting aging schedule. Not to exceed 90 percent of receivable value (used with guarantee only).

5. Unacceptable collateral may include, but not be limited to the following:

a. stock in applicant company and/or related companies;

b. personal items;

c. intangibles.

D. Equity

1. Will be no less than 20 percent of the loan amount for a start-up operation or acquisition and no less than 15 percent for an expansion.

2. Equity is defined to be:

a. cash;

b. paid-in capital;

c. paid-in surplus and retained earnings;

d. partnership capital and retained earnings.

3. No research, development expense nor intangibles of any kind will be considered equity.

E. Amount

1. For small businesses, the corporation's guaranty shall be:

a. no greater than 75 percent of a loan up to \$650,000; or

b. no greater than 70 percent of a loan up to \$1,100,000; or

c. no greater than 65 percent of a loan up to \$1,500,000;

d. if the loan request exceeds \$1,500,000 the guaranty shall not exceed \$1,000,000.

2. For certified minority-owned, women-owned, or owned by disabled persons, the corporation's guaranty shall be:

a. no greater than 90 percent of a loan up to \$560,000; or

b. no greater than 85 percent of a loan up to \$875,000; or

c. no greater than 75 percent of a loan up to \$1,300,000;

d. if the loan request exceeds \$1,300,000 the guaranty shall not exceed \$1,000,000.

3. For small businesses, the corporation's participation shall be no greater than 40 percent, but in no case shall it exceed \$1,000,000.

4. For certified minority-owned, women-owned, or owned by disabled persons, the corporation's participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

F. Terms. Terms may be negotiated with the bank, but in no case shall the terms exceed 20 years.

G. Fees

1. LEDC will charge a minimum guaranty fee of .5 percent of the guaranty amount up to a maximum amount of 2 percent of the guaranty amount.

2. LEDC will charge a \$100 application fee.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC but will not be considered when the debt:

- a. exceeds 25 percent of total loan; and/or
- b. pays off a creditor or creditors who are inadequately secured; and/or
- c. provides funds to payoff debt to principals of the business; and/or
- d. provides funds to payoff family members.

5. Funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 22:

§111. General Agreement Provisions

A. Guaranty Agreement

1. The bank is responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. The loan shall not be sold, assigned, participated out, or otherwise transferred without prior written consent of the LEDC Board.

3. If liquidation through foreclosure occurs, the bank will sell collateral and handle the legal proceedings.

- 4. There will be a reduction of the guaranty:
 - a. in proportion to the principal reduction of the amortized portion of the loan;
 - b. if no principal reduction has occurred in any annual period of the loan, a reduction in the guaranty amount will be made proportional to the remaining guaranty life.

5. The guaranty will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined in the guaranty agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation as stated in the guaranty agreement.

B. Participation Agreement

1. The bank is responsible for administration and monitoring of the loan.

2. The lead bank will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead bank may sell other participation with LEDC's consent.

4. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

5. The bank is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree

to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 22:

§113. Confidentiality

Confidential information in the files of the corporation and its accounts acquired in the course of duty is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 22:

§115. Conflict of Interest

No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 22:

§117. Conditions for Disbursement of Loan Proceeds

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, amended LR 15: (June 1989), repealed LR 22:

§119. Compliance Requirements for all Programs Loans

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, amended LR 15:(June 1989), repealed LR 22:

§121. Bank Responsibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, amended LR 15: (June 1989), repealed LR 22:

Appendix A

The application for financial assistance should consist of a completed LEDC application form and a comprehensive

business plan/loan proposal which contains but is not limited to the following guidelines:

A. A cover letter which contains:

1. dollar amount requested;
2. terms and timing of loan request;
3. type and price of collateral;
4. name, address, and phone number of contacted bank.

B. Executive Summary:

1. business description
 - a. name;
 - b. location and plant description;
 - c. product or service;
 - d. market and competition;
 - e. management expertise;
2. business goals;
3. summary of financial needs and application of funds (sources and uses);
4. earnings projections and potential return to investors.

C. Market analysis:

1. description of total market;
2. industry trends;
3. target market;
4. competition.

D. Products or services:

1. description of product line;
2. proprietary position: patents, copyrights and legal and technical considerations;
3. comparison to competitors' products.

E. Manufacturing process (if applicable):

1. materials;
2. sources of supply;
3. production methods.

F. Marketing strategy:

1. overall strategy;
2. pricing policy;
3. sales terms;
4. method of selling, distributing and servicing products.

G. Management plan:

1. form of business organization;
2. board of directors composition;
3. officers: organization chart and responsibilities;
4. list of stockholders with more than 15 percent ownership;
5. resumes of key personnel;
6. staffing plan/number of employees;
7. facilities plan/planned capital improvements;
8. operating plan/schedule of upcoming work for next one to two years;
9. list of work backlog, if any.

H. Financial data (See Note 1):

1. financial history (five years to present, if applicable);
2. three-year financial projections (first year by quarters remaining years annually);
 - a. profit and loss statements;
 - b. balance sheets;
 - c. cash flow chart;
 - d. capital expenditure estimates;
3. explanation of projections;

4. key business ratios;
5. explanation of use and effect of new funds;
6. potential return to investors compared to competitors and industry in general;
7. current signed personal financial statements of owners.

Note 1: All financial statements must meet Generally Accepted Accounting Principals (GAAP).

Applicants that have already assembled an SBA 7A loan package may substitute it for the above outlined business plan.

In both cases, the bank will be asked to share with LEDC any additional information deemed necessary by the bank for them to make a credit decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-51:2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 22:

Brett Crawford
Executive Director

9606#002

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, Bulletin 1706, regulations for implementation of the Exceptional Children's Act. Re-adoption 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, 1996. 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.

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; 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

9606#031

DECLARATION OF EMERGENCY

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

Waste Tire Priority System (LAC 33:VII.Chapter 105) (SW021E)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under authority of R.S. 30:2011, the secretary of the Department of Environmental Quality declares that an emergency action is necessary to ensure efficient management of promiscuous/unauthorized waste tire piles. Waste tires that are not processed in accordance with LAC 33:VII.10501 et seq. create environmental and health-related problems and pose a significant threat to the safety of the community should a fire occur.

It is necessary for the DEQ to adopt this emergency rule because the present regulations prevent the department from rapid response to tire piles that pose an immediate environmental threat. The emergency rule will accomplish a priority system that will continuously update the prioritization of sites throughout the year. The previous priority system established a list that could not be updated to include those sites that were potentially more dangerous or more of a nuisance. The emergency rule will also add proximity to major highways and hospitals and nursing homes as a factor in the prioritization system.

This emergency rule is effective on June 5, 1996, and shall remain in effect for the maximum of 120 days or until a final rule is promulgated, whichever occurs first.

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

Chapter 105. Waste Tires

§10505. Definitions

The following words, terms and phrases, when used in conjunction with the Solid Waste Rules and Regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

[See Prior Text]

Major Highway—all asphaltic concrete and concrete interstate and intrastate highways and roads maintained by the United States government or Louisiana state government, or both, or any agencies or departments thereof.

[See Prior Text]

Marketing—the selling and transferring of waste tires or waste tire material for recycling and/or beneficial use or reuse.

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:

§10536. Cleanup of Promiscuous/Unauthorized Tire Piles

A. Upon promulgation of these regulations, the administrative authority may issue agreements for cleanup of promiscuous/unauthorized tire piles. The number of agreements issued each year shall be determined based on the availability of funds in the Waste Tire Management Fund that are designated for promiscuous/unauthorized tire pile cleanup. Any such agreements will designate specific eligible sites and the department will monitor the cleanup activities, which shall be made in accordance with the standards and responsibilities outlined in the Solid Waste Regulations, LAC 33:VII. Any such agreements shall stipulate a maximum amount of total allowable costs that shall be paid from the Waste Tire Management Fund. These monies shall not be applied to indirect costs and other unallowable costs which include but are not limited to, administrative costs, consulting fees, or legal fees. Furthermore, they shall not be applied to reclamation efforts or cleanup costs associated with other types of contaminants which may be detected during the remediation process. Rather, these funds shall be applied to direct costs such as labor, transportation, processing, and disposal costs of the waste tires.

B. In order to apply for and receive funding for promiscuous/unauthorized tire site cleanup, local governments must provide the administrative authority with promiscuous/unauthorized tire site information. This information includes, but is not limited to, accurate site location, number of tires on site, visual report on site with photographs and proximity to residences, schools, hospitals and/or nursing homes, and major highways. Such information will be submitted using forms available from the administrative authority.

C. Promiscuous/unauthorized tire piles shall be chosen for cleanup based on their placement on the waste tire priority cleanup list. Point values will be assigned in accordance with the Waste Tire Management Fund Prioritization System located in Appendix B. These ranking criteria were developed in consideration of threat to human health, threat of damage to surrounding property, and adverse impact on the environment.

[See Prior Text in D]

E. Waste tires may not be removed from promiscuous/unauthorized waste tire piles without prior approval of the administrative authority.

F. The administrative authority will seek reimbursement from all responsible parties for any waste tire cleanup costs incurred by the state by any method allowed by law, provided same is practicable and cost effective.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:

**Appendix B
Waste Tire Management Fund Prioritization System**

Each waste tire site for which cleanup funds are solicited will be ranked according to the point system described below. The total number of points possible for any one site is 145 points. The points shall be allocated according to the following criteria:

I. Approximate Number of Tires in the Pile. This figure shall be an estimate by the department.

Number of Tires in Pile	Point Value
>1,000,000	50
250,001 - 1,000,000	40
100,001 - 250,000	30
50,001 - 100,000	20
<50,000	10

II. Proximity to Nearest Schools. If a school is located within the radius described below then the corresponding point value is assigned. Only one category may be chosen such that the maximum value allowed is 25.

Proximity to Nearest School	Point Value
School within 2 mile radius	25
School within 4 mile radius	17
School within 6 mile radius	9

III. Proximity to Residences. If 50 or more residences are located within the radius described below then the corresponding point value is assigned. Only one category may be chosen such that the maximum value allowed is 25.

Proximity to 50+ Residences	Point Value
50 or more within 2 mile radius	25
50 or more within 4 mile radius	17
50 or more within 6 mile radius	9

IV. Proximity to Hospitals and/or Nursing Homes. If a hospital and/or nursing home is located within the radius described below then the corresponding value is assigned. Only one category may be chosen such that the maximum value is 25.

Proximity to Hospital and/or Nursing Home	Point Value
Hospital and/or nursing home within 2 mile radius	25
Hospital and/or nursing home within 4 mile radius	17
Hospital and/or nursing home within 6 mile radius	9

V. Proximity to Major Highways. If a major highway is located within the radius described below then the corresponding value is assigned. Only one category may be chosen such that the maximum value is 20.

Proximity to Major Highway	Point Value
Major highway within ¼ mile radius	20
Major highway within ½ mile radius	10

J. Dale Givens
Secretary

9606#017

DECLARATION OF EMERGENCY

**Office of the Governor
Division of Administration**

General Travel—PPM 49 (LAC 4:V.Chapter 15)

The Division of Administration, under the authority granted by R.S. 39:231, has determined that it is necessary to exercise the emergency provisions of R.S. 49:953(B) to amend Title 4, Part V, Policy and Procedure Memoranda, Chapter 15, General Travel Regulations—PPM Number 49. Under this authority, the commissioner of administration is revising per diem rates (mileage, meals and lodging) to more accurately reflect the cost associated for state business travel and to clarify certain sections of PPM 49. This emergency rule is effective July 1, 1996 and shall remain in effect for 120 days or until a final rule is promulgated, whichever occurs first.

Title 4

ADMINISTRATION

**Part V. Policy and Procedure Memorandum
Chapter 15. General Travel Regulations - PPM
Number 49**

§1503. General Specifications

A.1. - 2. ...

A.3. Contracted Travel Services

The state has contracted for travel-agency services which must be used unless exemptions have been granted by Division of Administration prior to travel. Reservations for in-state hotel/motel accommodations are not required to be made through the contracted travel agencies.

A.4. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16: (November 1990), LR 22:

Subchapter B. Definitions

§1507. Definitions

A. For the purposes of this PPM, the following words have the meaning indicated.

Authorized Persons—

a. advisors, consultants, contractors, or other persons who are called upon to contribute time and services to the state who are not otherwise required to be reimbursed through a contract for professional, personal, or consulting services in accordance with R.S. 39:1481 et seq.;

b. members of boards, commissions, and advisory councils required by federal or state legislation or regulation. Travel allowance levels for all such members and any staff shall be those authorized for state employees unless specific allowances are legislatively provided.

Conference/Convention—is herein defined as a meeting for a specific purpose and/objective. Documentation required is a formal agenda and/or program.

Emergency Travel—under extraordinary circumstances where the best interests of the state require that travel be undertaken not in compliance with these regulations, approval after the fact by the commissioner of administration may be given if appropriate documentation is presented promptly. Each department shall establish internal procedures for authorizing travel in emergency situations.

Extended Stays—any assignment made for a period of 31 or more consecutive days at a place other than the official domicile.

In-State Travel—all travel within the borders of Louisiana or travel through adjacent states between points within Louisiana when such is the most efficient route.

International Travel—all travel to destinations outside the 50 United States, District of Columbia, Puerto Rico and the Virgin Islands.

Official Domicile—every state officer, employees, and authorized person, except those on temporary assignment, shall be assigned an official domicile.

a. Except where fixed by law, official domicile of an officer or employee assigned to an office shall be, at a minimum, the city limits in which the office is located. The department head or his designee should determine the extent of any surrounding area to be included, such as parish or region. As a guideline, a radius of at least 30 miles is recommended. The official domicile of an authorized person shall be the city in which the person resides, except when the department head has designated another location (such as the person's workplace).

b. A traveler whose residence is other than the office domicile of his/her office shall not receive travel and subsistence while at his/her official domicile nor shall he/she receive reimbursement for travel to and from his/her residence.

c. The official domicile of a person located in the field shall be the city or town nearest to the area where the majority of work is performed, or such city, town, or area as may be designated by the department head, provided that in all cases such designation must be in the best interests of the agency and not for the convenience of the person.

Out-of-state Travel—travel to any of the other 49 states plus District of Columbia, Puerto Rico and the Virgin Islands.

Per Diem—a flat rate paid in lieu of travel reimbursement for people on extended stays.

State Employee—employees below the level of state officer.

State Officer—

a. state elected officials;

b. department head as defined by Title 36 of the Louisiana Revised Statutes (secretary, deputy secretary, undersecretary, assistant secretary, and the equivalent positions in higher education and the office of elected officials).

Temporary Assignment—any assignment made for a period of less than 31 consecutive days at a place other than the official domicile.

Travel Period—a period of time between the time of departure and the time of return.

Travel Routes—the most direct and usually traveled route must be used by official state travelers. All mileage shall be computed on the basis of odometer readings from point of origin to point of return.

Traveler—a state officer, state employee, or authorized person when performing authorized travel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7.7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 22:

Subchapter C. Methods of Transportation
§1508. Cost-effective Transportation

The most cost-effective method of transportation that will accomplish the purpose of the travel shall be selected. Among the factors to be considered should be length of travel time, cost of operation of a vehicle, cost and availability of common carrier services, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7.7 (January 1981), LR 8:406 (August 1982), LR 15:820 (October 1989), LR 16:965 (November 1990), LR 22:

§1509. Air

A.- D.4. ...

E. A lost airline ticket is the responsibility of the person to whom the ticket was issued. The airline charge of searching and refunding lost tickets will be charged to the traveler. The difference between the prepaid amount and the amount refunded by the airlines must be paid by employee.

F. Companion fares when purchased for a state employee and non-state employee, reimbursement to the state employee will be the amount of the lowest logical fare.

G. Contract airfares are to be booked only through the state's contracted travel agencies and are to be used for official state business. Contract airfares alleviate penalties and restrictions. These fares cannot be used for personal/companion or spouse travel.

H. Traveler is to use the lowest logical airfare whether the plane is a prop or jet.

I. Frequent flyer miles accumulated from official state business must be used to purchase tickets for official business. Each individual is solely responsible for notification to their agency or department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:821 (October 1989), LR 16:967 (November 1990), LR 22:

§1511. Motor Vehicle

A. - B.1.e. ...

2. Personally-Owned Vehicles

a. ...

b. A mileage allowance shall be authorized for travelers approved to use personally-owned vehicles while conducting official state business. Mileage shall be reimbursable on the basis of 26 cents per mile.

c. ...

d. When the use of a privately-owned vehicle has been approved by the department head for out-of-state travel, the traveler will be reimbursed for in-route expenses inclusive of meals, lodging, and mileage on the basis of 26 cents per mile. The total cost of the mileage may not exceed the cost of travel by state contract air rate or coach rate, if no contract rate is available.

2.e. - 3.e. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:821 (October 1989), LR 16:968 (November 1990), LR 22:

Subchapter D. Lodging and Meals

§1515. Reimbursement

A. - B.2. ...

C. Meals (including tips)

1. Travelers may be reimbursed up to the following amounts for meals:

	IN-STATE	O/S (Incl. N.O.)	HIGH COST	EXTRA HIGH COST
Breakfast	\$ 5	\$ 6	\$ 7	\$ 8
Lunch	\$ 7	\$ 8	\$ 9	\$ 10
Dinner	\$ 12	\$ 14	\$ 16	\$ 18
TOTAL	\$ 24	\$ 28	\$ 32	\$ 36

2. Receipts are not required for routine meals within these allowances. Number of meals claimed must be shown on travel voucher. If meals of state officials exceed these allowances, receipts are required.

3. Cost of meals served in conjunction with state sponsored in-state conferences (may not exceed the following including tax):

- a. lunch in-state excluding New Orleans—\$10;
- b. lunch - New Orleans—\$12.

4. Refreshment expenditures for a meeting, conference or convention are to be within the following rates:

a. served on state property—not to exceed \$2.00 per person, per morning and/or afternoon session;

b. served on hotel properties—not to exceed \$3.50 per person, per morning and/or afternoon sessions.

D. Lodging (plus tax, receipts required)

Actual-not to exceed:

\$50—in state;

\$55—Baton Rouge, Monroe;

\$60—Bossier, Lake Charles, Shreveport;

\$70—New Orleans;*

\$60—out-of-state (except those listed)

\$90—high cost (Baltimore, Atlanta, Cleveland, Dallas, Denver, Detroit, Houston, Miami, Philadelphia, Phoenix, Pittsburgh, San Diego, St. Louis, San Antonio, Seattle, all of Hawaii);*

\$105—extra high cost (Boston, Chicago, Los Angeles, San Francisco, Washington, D.C.);*

\$140—New York City.*

*The inclusion of suburbs of these cities shall be determined by the department head on a case-by-case basis.

E. Conference Lodging. Travelers may be reimbursed expenses for conference lodging not to exceed the following rates per day. Receipts from a bona fide hotel or motel for lodging shall be submitted and attached to the travel voucher. Where multi-hotels are offered in conjunction with a conference, traveler shall seek to utilize the least expensive.

\$60—in-state(except those listed);

\$70—Baton Rouge, Bossier, Lake Charles, Shreveport;

\$80—New Orleans;*

\$140—all other out-of-state.*

*The inclusion of suburbs of these cities shall be determined by the department head on a case-by-case basis.

F. Extended Stays. For travel assignments involving duty for extended periods at a fixed location, the reimbursement rates indicated should be adjusted downward whenever possible. Claims for meals and lodging may be reported on a per diem basis supported by lodging receipt. Care should be exercised to prevent allowing rates in excess of those required to meet the necessary authorized subsistence expenses. It is the responsibility of each agency head to authorize only such travel allowances as are justified by the circumstances affecting the travel.

AUTHORITY NOTE; Promulgated in accordance with R.S. 39:231

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:822 (October 1989), LR 16:969 (November 1990), LR 22:

Subchapter E. Other Expenses

§1517. Reimbursement for Other Expenses

The following expenses incidental to travel may be reimbursed:

1. Communications expenses relative to official state business (receipt required for over \$3). Employees on domestic overnight travel status can be reimbursed up to \$3 for one call home upon arrival at their destination and a call every second night after the first night if the travel is extended several days. Employees on international travel can be reimbursed calls to their home for a maximum of five minutes per call upon arrival to and prior to departure from their

destination (within the first or last 24 hours of the trip, respectively). For stays in excess of seven days, one call will be allowed for each additional week. An additional week will be defined to be at least four days in duration.

2.- 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:405 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:822 (October 1989), LR 16:970 (November 1990), LR 22:

§1521. International Travel

A. ...

B. International travelers will be reimbursed the extra high-cost rates for lodging and meals, unless U.S. State Department rates are requested and authorized by the commissioner of administration prior to departure. Receipts are required for lodging and for meals over the allowed rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:231.

HISTORICAL NOTE: Written by the Office of the Governor, Division of Administration, November 1, 1972, promulgated LR 1:179 (April 1975), amended LR 1:338 (August 1975), LR 2:312 (October 1976), LR 5:93 (May 1979), LR 8:407 (August 1980), LR 7:7 (January 1981), LR 8:406 (August 1982), LR 15:823 (October 1989), LR 16:971 (November 1990), LR 22:

Edgar Jordan
Assistant Commissioner

9606#001

DECLARATION OF EMERGENCY

Department of Health and Hospitals Board of Nursing

Registration and Licensure Fees (LAC 46:XLVII.3361)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 37:918(12) and Act 95 of the 1996 Special Legislative Session, which delegates the authority to the board to adopt and revise rules and regulations necessary to implement R.S. 37:911 et seq., the Board of Nursing hereby finds that an imminent peril to the public welfare exists and accordingly adopts emergency rules related to LAC 46:XLVII.3361.

These emergency rules being implemented so that the Board of Nursing can collect fees to provide the necessary services relative to all Advanced Practice Registered Nurses in the state, this group of which comprises a large sector of critical health care providers to the Louisiana public.

The effective date of these emergency rules is May 16, 1996 and they shall remain in effect for 120 days or until the final rules take effect through the normal promulgation process, whichever occurs first.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 33. General Rules

Subchapter D. Registration and Licensure

§3361. Fees for Registration and Licensure

A. The board shall collect, in advance, fees for registration and licensure services as follows:

1. Registered Nurse:

- a. Examination, registration, work permit, and initial licensure \$35
- b. Repeat examination \$35
- c. Qualifying examination \$35
- d. Renewal of license \$25
- e. Reinstatement of lapsed license \$50
- f. Verification to other states \$15
- g. Endorsement \$50
- h. Duplicate renewal application fee \$10
- i. Duplicate license \$10

2. Advanced Practice Registered Nurse. In addition to the fees for Registered Nurse licensure, the board shall collect, in advance, fees for registration and licensure services as follows:

- a. Initial licensure \$75
- b. Renewal of license \$45
- c. Reinstatement of a lapsed license \$90
- d. Verification to other states \$15
- e. Endorsement \$75
- f. Duplicate renewal application fee \$10
- g. Duplicate license \$10

B. Fees for Returned Checks

1. The board shall collect a \$25 fee for returned checks for any of the fees discussed in Section 3361.A.

2. If the nurse fails to make restitution within 14 days from the date of the letter of notification of the returned check, then the nurse's current license shall become lapsed and practice as a Registered Nurse is no longer legal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918 and R.S. 37:927.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 8:417 (August 1982), amended by the Department of Health and Hospitals, Board of Nursing, LR 14:533 (August 1988), LR 22:

Barbara L. Morvant, M.N., R.N.
Executive Director

9606#043

DECLARATION OF EMERGENCY

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

Aid to Families with Dependent Children (AFDC)—Medicaid Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted

the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act, 42 USCA 1396a et seq. and as directed by the 1996-97 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid Program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has provided coverage for the Aid to Families with Dependent Children Medicaid Program (AFDC-M) under the Medicaid Program. The AFDC-M Program includes those individuals who would meet categorical eligibility if they were to pursue eligibility for AFDC cash assistance. Coverage for the AFDC-M eligibility category is optional under Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart C Section 435.210. Therefore a state may choose to include or exclude coverage for this eligibility category from its Title XIX State Plan. The department has determined it is necessary to terminate coverage for the AFDC-M eligibility category under the Medicaid Program. This action is being taken to avoid a budget deficit in the medical assistance programs due to the lack of sufficient state funds required to match the federal financial participation required under Title XIX of the Social Security Act. It is estimated that this action will reduce expenditures in the Medicaid Program by approximately \$6,000,000 for state fiscal year 1996-1997.

Emergency Rule

Effective for dates of services July 1, 1996 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will terminate coverage for the optional eligibility category, Aid to Families with Dependent Children - Medicaid as allowed by Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart C Section 435.210.

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

Bobby P. Jindal
Secretary

9606#027

DECLARATION OF EMERGENCY

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

Case Management Services—Reimbursement

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted

the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or adoption of the rule, whichever occurs first.

The Bureau of Health Services Financing reimburses optional targeted case management services for the following specific population groups:

- 1) mentally retarded or developmentally disabled individuals;
- 2) developmentally disabled infants and toddlers;
- 3) high-risk pregnant women (limited to the metropolitan New Orleans area);
- 4) HIV infected individuals;
- 5) seriously mentally ill individuals.

In addition, reimbursement is provided under the Home and Community-Based Services Waiver Program for case management services provided to participants in the Home Care for the Elderly Waiver.

The department adopted emergency rules which enhanced program requirements by setting uniform standards for case management services delivered to the above-referenced populations and specified the reimbursement methodology based on the provision of a 15-minute unit of service for the on-going services component of case management services. These rules were adopted effective July 22, 1994 and August 13, 1994 (*Louisiana Register*, Volume 20, Numbers 6 and 7). Subsequent emergency rulemaking continued this initiative in force as published in the *Louisiana Register*, (November 20, 1994, Volume 20, Number 11; April 20, 1995, Volume 21, Number 4; August 20, 1995, Volume 21, Number 8; November 20, 1995, Volume 21, Number 11; and March 20, 1996, Volume 22, Number 3). Subsequently the department determined that it was necessary to discontinue the unit of service reimbursement methodology and instituted a revised methodology through emergency rulemaking effective October 1, 1995 (*Louisiana Register*, Volume 21, Number 10 and Volume 22, Number 2). This revised methodology included a monthly reimbursement rate for both components of case management services, the initial assessment/service plan development and the ongoing services. This methodology also provided for the following two exceptions:

- 1) both payment methods, assessment fee and the monthly rate for on-going services, were retained for the high-risk pregnant women group; and
- 2) assessments prior authorized for the MR/DD and the seriously mentally ill populations through September 30, 1995 and completed by October 31, 1995 were to be reimbursed in accordance with the prior payment methodology.

Monthly reimbursement rates were assigned for each population group based upon minimum standards for service delivery for each of these groups.

Previously required standards for the provision of case management services mandated that a minimum number of hours of documented services be provided in each month for which the monthly rate is billed. Program reports indicated that utilization had decreased significantly for this program area and the department has determined that certain members of the populations served may not have been able to receive case management services due to the absence of payment

provisions for services of less than required number of hours. Therefore the department adopted an emergency rule which provided for the payment of a one-hour minimum of service delivery and additional 15-minute incremental units up to a cap of the monthly rate. Once the initial one-hour service minimum is met. The following emergency rule continues the rulemaking initiatives which established the flat rate reimbursement methodology and the subsequent modification of this methodology published in March 1996 (*Louisiana Register*, Volume 22, Number 3). The following emergency rule integrates the provisions of these earlier initiatives into one emergency rule which specifies how these services are to be reimbursed. Adoption of the following emergency rule is necessary to assure that the following fragile and vulnerable groups: the seriously mentally ill, mentally retarded/developmentally disabled including infants and toddlers, and the elderly persons included under the Home Care for the Elderly Waiver receive case management services essential to their obtaining needed medical services thereby preventing imminent peril to the health, safety, and welfare.

It is anticipated that implementation of this emergency rule will increase program expenditures by approximately \$602,057 for case management services for state fiscal year 1995-1996.

Emergency Rule

Effective for dates of service June 11, 1996 and thereafter the Department of Health and Hospital, Bureau of Health Services Financing adopts the following minimum program standards for case management service delivery and reimbursement methodology to govern the payment for the provision of optional targeted and waiver case management services under the Medicaid Program. These regulations supersede the previous emergency rules contained in the February and March 20, 1996 *Louisiana Register*, Volume 22, Numbers 2 and 3, concerning reimbursement for these services under the Medicaid Program.

I. General Provisions

A. All reimbursement for optional targeted and waiver case management services shall be made in accordance with all applicable federal and state regulations. Providers shall not bill for failed attempts to make contact with either consumers or collaterals.

B. The reimbursement rate for optional targeted and waiver case management services is a monthly rate for the provision of mandated monthly minimum services. It is not a capitated rate. Interim billing of one hour and additional 15-minute increments is permitted up the monthly rate. Interim billing for case management services for Seriously Mentally Ill, Elderly Waiver, MR/DD (Waiver and Non-Waiver), and Infants and Toddlers must meet the following criteria for billing and cannot occur prior to providing at least one 15-minute continuous face-to-face encounter in the 30-day cycle and:

1. completion of at least 60 minutes of case management services;
2. additional 15-minute periods of services provided in a 30-day cycle can be billed only after the first hour and the face-to-face encounter has been provided.

C. Hour or 15-minute codes cannot be accumulated across

30-day cycles and must count anew for each cycle or authorized period if less.

Service	Hour Rate	Max Units	15 Min Rate	Max Units	Max Mo Payment
Seriously Mentally Ill MR/DD	\$55.75	1	\$13.94	12	\$223
Non-Waiver MR/DD	\$49.00	1	\$12.55	8	\$147
Waiver	\$49.00	1	\$12.55	8	\$147
Infants and Toddlers	\$66.50	1	\$16.63	4	\$133
Infants and Toddlers Waiver	\$66.50	1	\$16.63	4	\$133
Elderly Waiver	\$49.50	1	\$12.38	4	\$ 99
HIV					\$ 99
High Risk Pregnant Women (On-going Services)					\$ 57
High Risk Pregnant Women Assessment Only— Max Pay					\$130

D. Billed case management services shall be monitored through the use of provider record review, consumer survey for verification of services provision and quality of service, and verification with collaterals of contacts made on behalf of the recipient. Any situation involving fraud and/or abuse in the provision of case management services will be referred to the SURS Unit for investigation. A subsequent referral will be made to the State Attorney General's Medicaid Fraud Control Unit by the SURS Unit if a criminal investigation is warranted.

E. The following Minimum Program Standards are required for the reimbursement of Case Management Services

1. Seriously Mentally Ill Individuals

a. A minimum of four hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The four hours must include one continuous 15-minute face-to-face contact with the consumer in addition to case management activities such as assessment, service plan development/update, linkage to services and follow up/monitoring.

b. Services shall be authorized for a maximum three-month time period. All services must be documented on the CAMIS service log and be entered into CAMIS. Weekly submission of CAMIS data is required.

c. The procedure codes for billing case management services for this population are Z0190 (hourly code) and Z1190 (15-minute code). The maximum monthly payment rate is \$223.

2. Mentally Retarded/Developmentally Disabled Individuals

a. A minimum of three hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The three hours must include one continuous 15-minute face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records for MR/DD waiver participants must be monitored by the case management agency every 60 days.

b. Services shall be authorized for a maximum three-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submission of MRCAMIS data is required.

c. The procedure codes applicable to case management services for the MR/DD population are Z0192 (hourly code) and Z1192 (15-minute code) for waiver participants and, Z0191 (hourly code) and Z1191 (15-minute code) for non-waiver participants. The maximum monthly payment rate is \$147 for both groups of the MR/DD population.

3. Developmentally Disabled Infants and Toddlers

a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one continuous 15-minute face-to-face contact with the recipient in addition to case management activities such as assessment/service plan development/update, linkage to services and follow-up/monitoring. Two home visits are required in a six-month period. Service provider records for MR/DD waiver participants must be monitored by the case management agency every 60 days.

b. Services shall be authorized for a maximum three-month time period. All services must be documented on the MRCAMIS service log and be entered into MRCAMIS. Weekly submissions of MRCAMIS data are required.

c. The procedure codes applicable to case management services for the infants and toddler population are Z0194 (hourly code) and Z1194 (15-minute code) for MR/DD waiver participants and Z0193 (hourly code) and Z1193 (15-minute code) for non-waiver participants. The maximum monthly payment rate is \$133 for both groups of children.

4. Persons infected with HIV

a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring. A home assessment is a required component of the initial assessment for HIV case management services.

b. The procedure code applicable to case management services for this population is Z0095 and the monthly payment rate is \$99.

5. High Risk Pregnant Women of the Metropolitan New Orleans Area

a. A minimum of one hour of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. This must include one face-to-face contact with the recipient in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up monitoring. A home assessment is a required component of the initial assessment for high risk pregnant women case management services.

b. In addition, the following contacts are required:

1) a minimum of monthly verbal contact with the recipient's obstetrician or his staff;

2) weekly verbal contact with the recipient beginning with her 37th week of pregnancy until the delivery;

3) quarterly home visits with the recipient;

4) weekly contact with other service providers and/or informal supports; and

5) a postpartal home visit to be made within 10 to 14 calendar days after delivery focusing on postpartal concerns and infant care.

c. The procedure codes continue to be X0057 for assessment and X0058 for ongoing services and the monthly payment rates are \$130 for the assessment and \$57 for ongoing services.

d. Only one assessment service shall be reimbursed for each pregnancy.

6. Home Care for the Elderly Waiver Program Participants

a. A minimum of two hours of documented case management services provided in each month in which services are billed is necessary to receive the full monthly fee. The two hours must include one face-to-face contact with the consumer in addition to case management activities such as assessment, service plan development/update, linkage to services and follow-up/monitoring.

b. Service provider records must be monitored by the case management agency every 60 days.

c. The procedures code for this population are Z0188 (hourly code) and Z1188 (15-minute) and the maximum the monthly payment rate is \$99.

F. Assessments prior authorized for the MR/DD populations and the seriously mentally ill population through September 30, 1995 and completed by October 31, 1995 are reimbursable under the reimbursement methodology in effect prior to October 1, 1995.

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

Bobby P. Jindal
Secretary

9606#029

DECLARATION OF EMERGENCY

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

Direct Reimbursement to Recipients During Period of
Retroactive Eligibility

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

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

The Bureau of Health Services Financing currently provides direct reimbursement to enrolled providers of medical care, supplies and services delivered to persons eligible for Medicaid coverage. In order to receive Medicaid reimbursement for services rendered prior to the individual's certification for Medicaid, the provider must refund the recipient's payment, if any, for services and submit a claim for reimbursement to the fiscal intermediary in accordance with program regulations.

On May 8, 1995, the United States District Court for the Eastern District of Louisiana issued a judgment requiring the Department of Health and Hospitals to provide repayment in some form to recipients for medical care, supplies and services rendered during the retroactive coverage period established by 42 U.S.C. Section 1396a(a)(34) when such care, supplies or services have been paid in whole or part by the recipient prior to certification. Therefore, the Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following emergency rule to comply with the judgment of the U.S. District Court. This emergency rule provides for the direct reimbursement to persons found eligible for Medicaid benefits beginning February 15, 1995 for their payments to enrolled providers for services covered by the Medicaid Program. It is anticipated that implementation of this emergency rule will increase state expenditures by approximately \$250,000 for state fiscal year 1996-1997.

Emergency Rule

Effective June 6, 1996 the Department of Health and Hospitals, Bureau of Health Services Financing adopts the following provisions to establish and govern direct reimbursement to a Medicaid eligible for his payment(s) made to any Medicaid-enrolled provider for medical care, services and supplies delivered during the recipient's period of retroactive eligibility and prior to receipt of the first medical eligibility card (MEC). Reimbursement shall be made only in accordance with all applicable federal and state regulations.

General Provisions

A. Reimbursement shall be made only for payments made to providers of medical care, services and supplies who were enrolled in the Medicaid Program at the time of service.

B. Reimbursement shall be made only for medical care, services and supplies covered by the Medicaid Program at the time of service.

C. Reimbursement shall be made only for medical care, services and supplies delivered during a retroactive eligibility period and prior to receipt of the recipient's first MEC.

D. Reimbursement shall be made only up to the maximum allowable Medicaid rate for the particular service(s) rendered.

E. Reimbursement shall be provided only under the following conditions.

1) Reimbursement shall be made only for eligibles certified for Medicaid coverage beginning February 15, 1995. Reimbursement shall be made for all bills, from any Medicaid-enrolled provider, for medical care, services and supplies covered by the Medicaid Program and rendered during the three months prior to application, as well as bills

paid during the period from application to certification.

F. The Medicaid recipient must submit the following documentation to the bureau in order to receive reimbursement:

1) Proof of payment shall be a receipt or similar evidence of payment.

G. Reimbursement for services rendered during any retroactive eligibility period and prior to receipt of the initial MEC for Medicaid eligibles certified beginning February 15, 1995 through the effective date of this rule shall be made in accordance with the following requirements:

1) Proof in accordance with Subsection F above, along with the recipient's Medicaid identification number must be presented to the local Bureau of Health Services Financing (Medicaid) office by December 30, 1996.

H. Reimbursement of payments for services rendered during any retroactive eligibility period or prior to receipt of the recipient's initial MEC from the effective date of this rule and henceforth shall be made in accordance with the following requirements:

1) A recipient's intention to make a request for reimbursement must be made known to the local Bureau of Health Services Financing (Medicaid) office within 30 days from the date of the letter sent to the recipient advising him of his right to request reimbursement.

2) Proof in accordance with Subsection F above must be presented to the local Bureau of Health Services Financing (Medicaid) office within 15 days of the request for reimbursement. If the recipient requests an extension on this time limit, it will be provided.

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

Bobby P. Jindal
Secretary

9606#028

DECLARATION OF EMERGENCY

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

Disproportionate Share—Hospital Payment Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other

measures as allowed by federal law." This emergency rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Medicaid Program previously reimbursed private hospitals and publicly-owned or operated hospitals serving a disproportionate share of low income patients via 12 pools with payments based on Medicaid days. This payment methodology was implemented effective February 1, 1994 to comply with the Health Care Financing Administration's policy on Section 1923 (Adjustment in Payments for Inpatient Hospital Services Furnished by Disproportionate Share Hospitals) of the Social Security Act (42 U.S.C. Section 1396r-4). In addition, disproportionate share payments for indigent care based on free care days were made by establishment of a payment methodology which reimbursed providers for indigent care days based on a Medicaid per diem equivalent amount.

The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) amended Section 1923 of the Social Security Act by establishing individual hospital disproportionate share payment limits. To comply with these new provisions, the bureau's disproportionate share payment methodology which included provisions governing the qualifications applicable to private and public hospitals and payment methodology applicable to publicly-owned or operated hospitals was amended effective on July 1, 1994 and was published in the *Louisiana Register* Volume 20, Number 7. In addition, the qualification applicable to both public and private hospitals was included in the July 1, 1994 emergency rule which requires a disproportionate share hospital to have a Medicaid inpatient utilization rate of at least 1 percent is incorporated in the following emergency rule. These regulations continued to govern DSH payments through June 30, 1995.

In order to comply with the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) requirements for the upcoming federal fiscal year and in order to avoid a budget deficit in the medical assistance programs, the bureau has determined that the following changes are necessary in the payment methodologies for public state-operated hospitals, private hospitals and public nonstate hospitals. The following emergency rule replaces all prior regulations governing disproportionate share payment methodologies (excluding disproportionate share qualification criteria).

It is estimated that implementation of this rule will reduce expenditures for disproportionate share payments in the Medicaid Program by approximately \$136,000,000 for state fiscal year 1995-1996 and \$40,312,599 for state fiscal year 1996-1997. Therefore, adoption of the following emergency rule is necessary to avoid a budget deficit in the medical assistance programs as state general fund revenues are not available to expend these additional monies.

Emergency Rule

Effective for dates of service on or after June 24, 1996 the Department of Health and Hospitals, Bureau of Health Services Financing replaces prior regulations governing disproportionate share hospital payment methodologies, excluding disproportionate share qualification criteria and

establishes the following regulations to govern the disproportionate share hospital payment methodologies for public state-operated, private hospitals and public nonstate hospitals.

Disproportionate Share Hospital Payments Public State-Operated Hospitals

DSH payments to individual public state-owned or operated hospitals as defined below will be equal to 100 percent of the hospital's net uncompensated costs as defined below subject to the adjustment provision described below.

Definitions:

Public State Operated Hospital—a hospital that is owned or operated by the State of Louisiana.

Net Uncompensated Cost—costs incurred during the state fiscal year of furnishing inpatient and outpatient hospital services net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payor payments and all other inpatient and outpatient payments received from uninsured and Medicaid patients.

Final payment will be based on the uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

Private Hospitals and Public Nonstate Hospitals

A. Reimbursement will no longer be provided for indigent care in private hospitals or public nonstate hospitals qualifying for disproportionate share payments.

B. The following pools, public local government acute care hospital and public local government distinct part psychiatric units/free-standing psychiatric hospitals are added to the six pools. These hospitals will no longer receive a DSH payment equal to each hospital's net uncompensated costs. Disproportionate share reimbursement for these qualifying hospitals will be based on methodology described below.

C. Each private or public nonstate hospital qualifying for participation in the eight disproportionate share pools with payments based on Medicaid days will receive payments which are the lesser of 100 percent of its net uncompensated costs of providing services to Medicaid recipients and uninsured patients or their disproportionate share payment calculated by the bureau via the pool methodology.

D. Annualization of days for the purposes of the Medicaid days pools is not permitted. The bureau shall utilize the records of the audit intermediary to determine actual Medicaid days for the months needed to equate to a full year from the previous cost reporting period for existing hospitals with short cost reporting periods.

E. Qualification for and payment adjustment for DSH shall be based on the hospital's year end cost report for the year ended during the period July 1 through June 30 of the previous year.

F. Reimbursement will be based on Medicaid days included (based on qualification) in the eight pools listed in Item I below.

G. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization, but for purposes of disproportionate share hospital payment adjustments, the distinct part psychiatric units shall be placed in the psychiatric pools while the acute medical/surgical

unit(s) shall be included in the appropriate teaching or nonteaching pool. Hospitals must meet the criteria for the pool classification based on their fiscal year-end cost report as of June 30 of the previous year.

H. For purposes of the pools defined below, service district hospitals/beds located outside the service district will be classified by the bureau as privately-owned and operated and shall be placed in the appropriate private hospital/unit pools.

I. The eight pools are as follows:

1. *Private Rural Acute Hospitals*—privately-owned acute care general, rehabilitation, and long term care hospitals (exclusive of distinct part psychiatric units) which are designated as a rural hospitals under criteria specified below. This includes public local government acute hospital days attributable to beds/units located in an area which is designated as rural and is located outside the service district area.

2. *Private Rural Distinct Part Psychiatric Units/Freestanding Psychiatric Hospitals*—privately-owned distinct part psychiatric units/freestanding psychiatric hospitals which are located in a rural area under criteria specified below. This includes public local governmental psychiatric hospital days attributable to beds/units located in an area which is designated as rural and is located outside the service district area.

3. *Private Teaching Hospitals*—privately-owned acute care, general, rehabilitation, and long term care hospitals (exclusive of distinct part psychiatric units) which are recognized as approved teaching hospitals under criteria specified below. This includes public local government acute hospital days attributable to beds/units located in an area outside the service district area and classified as a teaching hospital.

4. *Private Urban Nonteaching Hospitals*—privately-owned acute care general hospitals and long term care hospitals (exclusive of distinct part psychiatric units) which are designated as urban hospitals and not recognized as approved teaching hospitals, under criteria specified below. This includes private urban non-teaching hospital days attributable to beds/units located in an area which is designated as urban and is located outside the service district area.

5. *Private Teaching Distinct Part Psychiatric Units/Freestanding Psychiatric Hospitals*—privately-owned distinct part psychiatric units/freestanding psychiatric hospitals which meet the criteria for recognition as approved teaching hospitals, under criteria specified below. This includes public local government distinct part psychiatric units/free-standing psychiatric hospital days attributable to beds/units located outside the service district area and classified as a teaching hospital.

6. *Private Urban Nonteaching Distinct Part Psychiatric Units/Freestanding Psychiatric Hospitals*—privately-owned distinct part psychiatric units/freestanding psychiatric hospitals which are located in an urban area and do not meet the criteria for recognition as approved teaching hospitals, under criteria specified below. This includes public local government psychiatric hospital days attributable to beds/units

located in an area which is designated as urban and is located outside the service district area.

7. *Public Local Government Acute Hospitals*—local government-owned acute care general rehabilitation and long term care hospitals (exclusive of distinct part psychiatric units). Only days attributable to beds/units located within the service district area qualify for inclusion to the pool.

8. *Public Local Government Distinct Part Psychiatric Units/Freestanding Psychiatric Hospitals*—local government-owned distinct part psychiatric units/freestanding psychiatric hospitals. Only days attributable to beds/units located within the service district area qualify for inclusion in this pool.

J. The definitions for hospital classifications applicable to the above Medicaid days pools are given below.

1. *Teaching Hospital*—A teaching hospital is defined as a licensed acute care hospital in compliance with the Medicare regulations regarding such facilities, or a specialty hospital with a graduate medical education program that is excluded from the prospective payment system as defined by Medicare. A specialty teaching hospital must have a written affiliation agreement with an accredited medical school to provide post graduate medical resident training in the hospital for the specialty services provided in the specialty hospital. The affiliation agreement must contain an outline of its program in regard to staffing, residents at the facility, etc. A distinct part or carve-out unit of a hospital shall not be considered a teaching hospital separate from the hospital as a whole. Teaching specialty hospitals that are not recognized by Medicare as an approved teaching hospital must furnish to the department, copies of graduate medical education program assignment schedules and rotation schedules which document actual on-going resident training throughout the applicable cost reporting period and shall only be included in the teaching hospital pool for those days that graduate medical education is being provided.

2. *Nonteaching Hospital*—an acute care general hospital or specialty hospital not recognized as an approved teaching hospital by the department or under Medicare principles for the fiscal year-end cost report as of June 30 of the previous year.

3. *Urban Hospital*—a hospital located in a Metropolitan Statistical Area as defined per the 1990 census. This excludes any reclassification under Medicare.

4. *Rural Hospital*—a hospital that is not located in a Metropolitan Statistical Area as defined per the 1990 census. This excludes any reclassification for Medicare.

5. *Distinct Part Psychiatric Unit/Free-standing Psychiatric Hospital*—distinct part psychiatric units of acute care general hospitals or psychiatric units in long term care and rehabilitation hospitals meeting the Medicare criteria for PPS exempt units and enrolled under a separate Medicaid provider number and freestanding psychiatric hospitals enrolled as such.

K. Disproportionate share payments for each pool shall be calculated based on the product of the ratio determined by dividing each qualifying hospital's total Medicaid inpatient days for the applicable cost report by the total Medicaid inpatient days provided by all such hospitals in the state qualifying as disproportionate share hospitals in their

respective pools, and then multiplying by an amount of funds for each respective pool to be determined by the director of the Bureau of Health Services Financing. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days. Pool amounts shall be allocated based on the consideration of the volume of days in each pool or the average cost per day for hospitals in each pool.

L. If at audit or final settlement of the cost reports on which the pools are based, the above qualifying criteria are not met, or the number of Medicaid inpatient days are reduced from those originally reported, appropriate action shall be taken to recover any over payments resulting from the use of erroneous data. No additional payments shall be made if an increase in days is determined after audit. Recoupment of overpayment from reductions in pool days originally reported shall be redistributed to the hospital that has the largest number of inpatient days attributable to individuals entitled to benefits under the State Plan of any hospitals in the state for the year in which the recoupment is applicable.

M. Hospitals/units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments. Also, hospital/units which reduce their services by 25 percent as compared to their cost report data on services provided shall be eligible for DSH pool payments in accordance with the level of services provided as indicated in the most current available cost report or as documented from claims history obtained from the claims intermediary.

General Provisions

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

Disproportionate share payments cumulative for all DSH payments under all DSH payment methodologies shall not exceed the federal disproportionate share state allotment for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospitals' disproportionate share payments to remain within the federal disproportionate share allotment or the state disproportionate share appropriated amount. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment each year, the department shall calculate a pro rata decrease for each public (state) hospital based on the ratio determined by dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public hospitals during the state fiscal year and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment. A pro rata decrease for nonstate hospitals will be calculated based on the ratio determined by dividing the hospitals Medicaid days by the days for all qualifying nonstate hospitals and then multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

Interested persons may submit comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services

Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this emergency rule.

Bobby P. Jindal
Secretary

9606#033

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waiver Program
Mentally Retarded/Developmentally Disabled Waiver

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing administers the Home and Community Based Services Program. Participation in each Home and Community Based Services Waiver Program is limited to a specific number of participants based on the approval of the waiver program by the Health Care Financing Administration. Previously the bureau filled approved vacated slots by allocating the vacated slot to the next available person on the appropriate waiting list. That person, if found eligible, became the next occupant of the slot. This process was continued with the maximum number of allowable slots approved by the Health Care Financing Administration serving as the participation limit.

The bureau revised the above policy for the Mentally Retarded/Developmentally Disabled Waiver Program through emergency rulemaking (*Louisiana Register*, Volume 21, Number 7) by mandating that vacated slots would not be filled except that the eligibility determination process had been completed in the following circumstances: (1) for those persons whose applications for waiver services were filed in the parish BHSF office prior to July 13, 1995; and (2) for those foster children who have been designated by court order and who are in the custody of the Office of Community Services for whom that agency will provide the state funds

required to match federal financial participation for the waiver.

The bureau subsequently determined that it is necessary to revise the above policy regarding the filling of slots in the MR/DD Waiver Program and adopted an emergency rule (*Louisiana Register*, Volume 21, Number 10) which specified how these vacant slots are to be filled. The vacated slot would be allocated to the next available person on the appropriate waiting list. That person, if found eligible, becomes the occupant of that slot. If that person is not found eligible, the next available person on the appropriate waiting list is reviewed for eligibility for the slot. This process is continued until the slot is filled. The maximum number of slots to be filled must not exceed the number of filled slots as of September 1, 1995. The above provisions were continued in force through subsequent emergency rulemaking as published in the February 20, 1996 *Louisiana Register*.

Adoption of the following emergency rule is necessary to maintain the above policy on the filling of MD/DD slots at the September 1, 1995 level in order to avoid a budget deficit in the medical assistance programs and to comply with the line item appropriation for the MR/DD Home and Community Based Waiver Program. Program reports through December 31, 1995 indicate that the expenditures for this program total \$23,026,118 which is 48 percent of the \$47,918,000 appropriated for the entire state fiscal year 1996 with one half of the year still remaining. If the participation level is not maintained expenditures will exceed the legislative appropriation.

Emergency Rule

Effective June 5, 1996 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following methodology for filling vacant slots in the MR/DD Waiver Program.

1. The maximum number shall not exceed the number of filled slots as of September 1, 1995.

2. The bureau shall fill vacant slots by allocating a vacated slot to the next available person on the appropriate waiting list. That person, if found eligible, becomes the occupant of that slot. If that person is not found eligible, the next available person on the appropriate waiting list will be reviewed for eligibility for the waiver slot.

Bobby P. Jindal
Secretary

9606#032

DECLARATION OF EMERGENCY

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

Medically Needy Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted

the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act, 42 USCA 1396a et seq. and as directed by the 1996-97 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid Program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has provided coverage for the Medically Needy Program under the Medicaid Program. The Medically Needy Program includes those individuals or families who meet all AFDC or SSI related categorical requirements and whose income is within the Medically Needy Income Eligibility Standard and/or whose resources are within the allowable limits. It also includes those individuals or families whose resources fall within the AFDC or SSI limits, but whose income is above the Medically Needy Income Eligibility Standard. Coverage for these individuals is optional under Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart D Section 435.300. A state may choose to include or exclude coverage for this eligibility category from its Title XIX State Plan. The department has determined it is necessary to terminate coverage for the Medically Needy Eligibility Category. This action is being taken to avoid a budget deficit in the medical assistance programs due to the lack of sufficient state funds required to match the federal financial participation required under Title XIX of the Social Security Act. It is estimated that this action will reduce expenditures in the Medicaid Program by approximately \$57,500,000 for state fiscal year 1996-1997.

Emergency Rule

Effective for dates of services July 1, 1996 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will terminate coverage for all individuals certified for the Medically Needy Program including those individuals with an approved period of coverage which extends beyond June 30, 1996.

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

Bobby P. Jindal
Secretary

9606#026

DECLARATION OF EMERGENCY

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

Reimbursement Methodology for Private Nursing Facility Services

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

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

The Department of Health and Hospitals adopted the following rule through emergency rulemaking as published in the *Louisiana Register*, January, May, September and December, 1995 (Volume 21, Numbers 1, 5, 9 and 12); and May and June 1996, Volume 22, Numbers 5 and 6. This emergency rule repeals the August 1, 1984 rule and adopts provisions to govern private nursing facility services which re-establish a prospective cost-related methodology based on specific cost categories for each Level of Care and specifies the inflationary adjustment mechanism or recalculation period. Within this framework the following changes are included: the new categories consist of three direct and five indirect resident care costs and the incentive factor; the annual wage for nonsupervisory service workers is deleted as a single component but the following categories where these and other costs are incorporated, i.e., housekeeping/linen/laundry, other dietary, plant operation and maintenance, administrative and general are established; nursing services cost are limited to one category. This revision of the methodology represents an improved and more efficient manner for determining cost factors reimbursable under the Medicaid Program. The calculation of the incentive factor remains at five percent but excludes building costs from the computation. The percentiles to be utilized are changed from the single current

60th percentile to the following percentiles: direct resident care costs (80th); indirect resident care costs are at the 60th percentile except housekeeping/linen/laundry/ (70th). The required nursing service hours remain at the current levels: the intermediate care levels one and two remain at 2.35, and the skilled nursing level continues to be 2.6. Also, the current rules for specialized levels of nursing facility care, i.e., Technology Dependent Care, Infectious Disease, and the Neurological Rehabilitation Treatment Program are not revised in the following rule.

The Department of Health and Hospitals now finds it necessary to continue in force the emergency rule through June 30, 1996 in order to allow additional time for input from affected parties.

Emergency Rule

Effective June 16, 1996 through June 30, 1996, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the August 1, 1984 rule governing reimbursement for private nursing facility services and adopts the following methodology and provisions to govern reimbursement of these services for Medicaid recipients. Reimbursement for the nursing home reform requirements of the Omnibus Budget Reconciliation Act of 1987 are incorporated in the following methodology and provisions. Costs are determined based upon audited and or desk reviewed cost reports to calculate the new base rate components.

REIMBURSEMENT METHODOLOGY FOR PRIVATE NURSING FACILITIES

A. General Provisions

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

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

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

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

B. Cost Determination

1. Definitions

a. Consumer Price Indices

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

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

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

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

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

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

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

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

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

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

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

2. Table I. Base Rate Components

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Annualization

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

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

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

a. temporary adjustments; or

b. base rate adjustments as described below:

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

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

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

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

C. Filing of Cost Reports

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

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

3. Cost reports will be compared by the Bureau of Health Services Financing to the rates calculated by this methodology

at least every three years to insure that the rates remain reasonably related to costs. When indicated by such comparison, base rate component and the overall base rate will be adjusted to reflect cost experience.

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

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

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

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

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

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

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

5. Sales of Facilities

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

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

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

6. New Facilities

a. For cost reporting purposes a new facility is defined as a newly constructed facility. A new facility is paid the applicable patient Level of Care rates. A new facility is not

required to file a cost report for rate setting purposes until one full operating year has been completed.

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

Bobby P. Jindal
Secretary

9606#058

DECLARATION OF EMERGENCY

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

Reimbursement Methodology for Private
Nursing Facility 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 pursuant to the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

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

The Department of Health and Hospitals adopted the following rule through emergency rulemaking as published in the *Louisiana Register*, January, May, September and December, 1995 (Volume 21, Numbers 1, 5, 9 and 12). This emergency rule repeals the August 1, 1984 rule and adopts provisions to govern private nursing facility services which re-establish a prospective cost-related methodology based on specific cost categories for each Level of Care and specifies the inflationary adjustment mechanism or recalculation period. Within this framework the following changes are included: the new categories consist of three direct and five indirect resident care costs and the incentive factor; the annual wage for nonsupervisory service workers is deleted as a single component but the following categories where these and other costs are incorporated, i.e., housekeeping/linen/laundry, other dietary, plant operation and maintenance, administrative and

general are established; nursing services cost are limited to one category. This revision of the methodology represents an improved and more efficient manner for determining cost factors reimbursable under the Medicaid Program. The calculation of the incentive factor remains at five percent but excludes building costs from the computation. The percentiles to be utilized are changed from the single current 60th percentile to the following percentiles: direct resident care costs (80th); indirect resident care costs are at the 60th percentile except housekeeping/linen/laundry/ (70th). The required nursing service hours remain at the current levels: the intermediate care levels one and two remain at 2.35, and the skilled nursing level continues to be 2.6. Also, the current rules for specialized levels of nursing facility care, i.e., Technology Dependent Care, Infectious Disease, and the Neurological Rehabilitation Treatment Program are not revised in the following rule.

The Department of Health and Hospitals now finds it necessary to continue in force the emergency rule through June 15, 1996 in order to allow additional time for input from affected parties.

Emergency Rule

Effective June 1, 1996 through June 15, 1996, the Bureau of Health Services Financing repeals the August 1, 1984 rule governing reimbursement for private nursing facility services and adopts the following methodology and provisions to govern reimbursement of these services for Medicaid recipients. Reimbursement for the nursing home reform requirements of the Omnibus Budget Reconciliation Act of 1987 are incorporated in the following methodology and provisions. Costs are determined based upon audited and or desk reviewed cost reports to calculate the new base rate components.

REIMBURSEMENT METHODOLOGY FOR PRIVATE NURSING FACILITIES

A. General Provisions

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

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

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

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

B. Cost Determination

1. Definitions

a. Consumer Price Indices

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

CPI-Housekeeping/Linen/Laundry—the Consumer

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

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

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

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

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

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

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

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

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

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

2. Table I. Base Rate Components

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

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

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

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

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

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

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

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

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

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

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

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

e. Rental Value. The base value as computed above is multiplied by 150 percent of the 30-year Treasury Bill Rate as

of December 31, 1993. The result of this computation is then converted to a daily rental value rate.

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

g. Annualization

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

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

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

a. temporary adjustments; or

b. base rate adjustments as described below:

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

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

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

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

C. Filing of Cost Reports

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

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

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

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

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

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

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

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

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

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

5. Sales of Facilities

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

b. If the purchaser continues the operation of the facility as a provider of Title XIX services, he is required to furnish an initial cost report covering the date of purchase to

the end of the facility fiscal year under his ownership. Thereafter, the facility will file a cost report annually on the purchaser's designated fiscal year end.

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

6. New Facilities

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

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

Bobby P. Jindal
Secretary

9606#010

DECLARATION OF EMERGENCY

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

Supplemental Security Income—Medicaid Program

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act, 42 USCA 1396a et seq. This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has provided coverage for the Supplemental Security Income - Medicaid (SSI-M) under the Medicaid Program. The SSI-M Program includes those individuals who would meet categorical eligibility if they were to pursue eligibility for Supplemental Security Income cash assistance. Coverage for the SSI - M eligibility category is optional under Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart C Section 435.210. Therefore a state may choose to include or exclude coverage for this eligibility category from its Title XIX State Plan. The department has now determined it is necessary to terminate coverage for the SSI-M eligibility category under the Medicaid Program. This action is being taken to avoid a budget deficit in the medical assistance

programs due to the lack of sufficient state funds required to match the federal financial participation required under Title XIX of the Social Security Act. It is estimated that this action will reduce expenditures in the Medicaid Program by approximately \$15,800,000 for state fiscal year 1996-1997.

Emergency Rule

Effective for dates of services July 1, 1996 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will terminate coverage for the optional eligibility category, Supplemental Security Income - Medicaid, as allowed by Title XIX of the Social Security Act Section 1902(a)(10) and 42 CFR Subpart C Section 435.210.

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

Bobby P. Jindal
Secretary

9606#025

EMERGENCY RULE

Department of Treasury Bond Commission

Reimbursement Contracts (LAC 71:III)

The Omnibus Bond Authorization Act, in order to facilitate the funding of capital improvements by certain governmental units and political subdivisions of the state, has authorized the issuance of general obligation bonds contingent upon the applicable management board, governing body or state agency entering into and executing a reimbursement contract with the State Bond Commission pertaining to the reimbursement payments and reimbursement reserve account payments for such projects.

The execution of such reimbursement contracts does not in any way affect, restrict or limit the pledge of the full faith and credit of the State of Louisiana to the payment of the general obligation bonds issued pursuant to the authority of such Act.

The State of Louisiana is obligated to the general obligation bondholder regardless of the existence of any reimbursement contracts between the state and any of its governmental units or political subdivisions, and likewise the governmental unit or political subdivision is obligated to make payment to the state of the money loaned under the reimbursement contracts, regardless of the current status of any general obligation bonds.

In some instances the prepayment of such reimbursement contracts can result in savings and/or other benefits to such governmental units and political subdivisions, and to that end a clear and orderly process for entering into and prepaying reimbursement contracts will benefit both the state and the governmental units and political subdivisions utilizing such tax-exempt funds by insuring that funds are handled in such a manner as to maintain the tax-exempt status of any bonds issued in connection with the transaction. Therefore, the

following is the policy of the Department of the Treasury, office of the State Bond Commission, to be considered relative to reimbursement contracts:

Title 71

TREASURY

Part III. Bond Commission

1. Any governmental entity or political subdivision borrowing money from the proceeds of a state general obligation bond issue shall, at the time the money is borrowed from the state, enter into a reimbursement contract as provided in the Omnibus Bond Authorization Act pursuant to which the bonds were issued, which reimbursement contract shall provide for the terms and conditions under which these funds shall be repaid by the governmental entity or political subdivision. At the time a reimbursement contract is executed for the underlying tax-exempt obligation, an IRS Form 8038G or Form 8038GC shall be prepared by the attorney general and shall be executed by the recipient of the bond proceeds.

2. Any governmental unit or political subdivision which has entered into a reimbursement contract shall be allowed to prepay the reimbursement contract:

a. if the prepayment would result in a minimum net present value savings in accordance with Schedule A hereto; or

b. if economic and administrative benefits accrue to the governmental unit or political subdivision as a result of the prepayment as may be reasonably determined by the staff of the State Bond Commission; or

c. a prepayment characterized as a current refunding shall be permitted in any case.

3. A governmental unit or political subdivision wishing to prepay a reimbursement contract shall make such request in writing to the office of the State Bond Commission. The staff shall determine the amount due for prepayment, including principal and interest due less the amount of any reimbursement reserves. No redemption premium shall be charged to prepay a reimbursement contract unless such premium is needed to pay a corresponding redemption premium to the state's bondholders within 90 days of such prepayment.

4. The staff of the office of the State Bond Commission shall then send written notification to the chief financial officer or other appropriate official for the entity requesting prepayment setting forth the amount owed for prepayment. Copies of the notice shall be forwarded to the fiscal officer of the Department of the Treasury, the attorney general, and the Division of Administration. The chief financial officer or other official to whom the notice is sent shall verify in writing that they concur with the figures submitted in the written notice.

5. If application is made to the State Bond Commission for the issuance of refunding bonds, the proceeds of which are to be used for the prepayment of a reimbursement contract, a copy of the notification submitted pursuant to Section 4 above must be attached to the application. Upon receipt of such an application, the state debt analyst shall be immediately notified. The total amount due in order to prepay the reimbursement contract must be verified by the state debt analyst and made a part of the file. Once the amounts have

been verified the usual procedure for approval of bond applications shall be followed.

6. After the recipient's refunding bonds have been sold, the applicant must contact the office of the State Bond Commission to arrange payment of the reimbursement contract. Prepayments must be accompanied by a certificate of the chief financial officer or bond counsel for the prepaying entity attesting to the correct arbitrage yield on the refunding bonds.

7. Upon delivery of the prepayment check, the state debt analyst shall fill out the parish and local government reimbursement contract prepayment receipt log showing receipt of the money, where it is to be deposited and whether it is to be yield restricted to the rate of arbitrage yield certified to by the bond counsel for the prepaying entity (in the case of prepayments funded by a tax-exempt bond issue) or to the rate of the state bond issue (in the case of prepayments not funded with the proceeds of a tax-exempt bond issue, such as those funded from tax revenues or user fees). The proceeds received as prepayment of reimbursement contracts shall be deposited by the Fiscal Office, Department of the Treasury, into the State Treasury in accordance with the designation shown on the form and shall be placed in the Capital Outlay Escrow Fund. Such funds shall be yield restricted as indicated above or yield reduction payments shall be made as necessary until such funds are expended in accordance with law. All interest earnings on such funds shall remain in the Capital Outlay Escrow Fund and shall be restricted to the same yield as the original prepayment deposit or yield reduction payments shall be made as necessary until all such earnings are expended along with the principal prepayment amount.

8. Upon deposit of the prepayment proceeds, the fiscal control section of the Department of the Treasury shall notify the Division of Administration that funds are now available to be used in accordance with the Capital Outlay Bill for the current fiscal year. Such notification shall include a copy of the reimbursement prepayment receipt form.

9. The Division of Administration shall notify the fiscal control section of the Department of Treasury when these funds have been allocated to a particular project. Such notification shall include the name of the project and the amount allocated.

THE APPROPRIATE THRESHOLD OF SAVINGS THAT SHOULD EXIST FOR AN ECONOMIC ADVANCE REFUNDING:

Months To Call	Minimum Present Value Savings To Refund
0 - 12	Net Present Value Savings > 0
13 - 24	Net Present Value Savings > 1.5%
25 - 48	Net Present Value Savings > 3.0%
> 48	Net Present Value Savings > 5.0%

CHECKLIST FOR COMPLIANCE WITH POLICY AND PROCEDURES FOR PREPAYMENT OF REIMBURSEMENT CONTRACTS

- Name of entity _____
- Identifying information on reimbursement contract
Name _____
Series _____ Issue Date _____

- Amount of Original Issue _____
Principal and Interest Payment Dates: P _____ I _____
- IRS Form 8038G or 8038GC executed? Yes _____ No _____
 - Net present value savings _____
 - Date request for prepayment approval received _____
 - Forwarded to State Debt Analyst II (date) _____
 - Cost of prepayment:
 - Principal \$ _____
 - Interest \$ _____
 - Redemption premium, if any \$ _____
 - Less Reserves \$ _____
 - Total amount due for prepayment \$ _____
 - Request for verification forwarded to Chief Financial Officer _____
(Copies to Division of Administration; Attorney General; Fiscal Control Section)
 - Verification received from Chief Financial Officer _____
 - Prepayment received on (date) _____
 - Arbitrage yield certificate attached Yes _____ No _____
 - Reimbursement Prepayment Receipt Form completed _____
 - Funds deposited into Capital Outlay Escrow Account on _____
 - Yield restricted to rate of _____
 - Division of Administration notified of deposit on _____

CHECKLIST FOR BOND APPLICATIONS WHEN BOND PROCEEDS ARE TO BE USED FOR PREPAYMENT OF REIMBURSEMENT CONTRACTS

- Name of entity _____
- Identifying information on reimbursement contract to be prepaid with bond proceeds
Name _____
Series _____ Issue Date _____
Amount of Original Issue _____
Principal and Interest Payment Dates: P _____ I _____
- State Debt Analyst notified of bond application (date) _____
- Verification of prepayment amount received from SDA (date) _____

NOTIFICATION OF AMOUNT DUE FOR PREPAYMENT OF REIMBURSEMENT CONTRACT

YOU ARE HEREBY NOTIFIED THAT THE OFFICE OF THE STATE BOND COMMISSION HAS RECEIVED YOUR REQUEST FOR PREPAYMENT OF THE FOLLOWING REIMBURSEMENT CONTRACT:

- Name of entity _____
- Identifying information on reimbursement contract to be prepaid with bond proceeds
Name _____
Series _____ Issue Date _____
Amount of Original Issue _____
Principal and Interest Payment Dates: P _____ I _____

A REVIEW OF OUR RECORDS INDICATES THAT THE FOLLOWING AMOUNTS ARE DUE IN ORDER TO PREPAY THE REIMBURSEMENT CONTRACT ON OR BEFORE THE FOLLOWING DATE _____

- Cost of prepayment:
- Principal \$ _____
 - Interest \$ _____
 - Redemption premium, if any \$ _____
 - Less Reserves \$ _____
 - Total amount due for prepayment \$ _____

IF YOU CONCUR WITH THE ABOVE FIGURES, SIGN AND RETURN THE ORIGINAL OF THIS NOTICE TO THE ADDRESS SHOWN ABOVE. IF YOU DISAGREE WITH THE ABOVE FIGURES, CONTACT THE FOLLOWING PERSON AT THE STATE BOND COMMISSION:

State Debt Analyst Chief Financial Officer

PARISH AND LOCAL GOVERNMENT
REIMBURSEMENT CONTRACT PREPAYMENT
RECEIPT LOG

1. Name of prepaying entity _____
2. Identifying information on reimbursement contract to be prepaid
Name _____
Series _____ Issue Date _____
Amount of Original Issue _____
Principal and Interest Payment Dates: P _____ I _____
3. Check No. _____
4. Dated _____
5. Amount Received _____
6. Date Received _____
7. Deposited into: _____ (Account Name)
8. Yield restricted or yield reduction payments owed in accordance with the following rates:
Rate of arbitrage yield for prepaying entity _____
Rate of arbitrage yield for state bond issue _____
9. Source of Funding
a. Local Bond Issue? _____
b. Tax-Revenue? _____

Ken Duncan
State Treasurer

9606#015

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Office of Fisheries**

Freshwater Mussel Harvest (LAC 76:VII.161)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, and R.S. 56:450, which allows the secretary to promulgate rules and regulations for the harvest of freshwater mussels, the secretary of the Department of Wildlife and Fisheries hereby finds that an imminent peril to the public welfare exists and accordingly adopts the following emergency rule. This emergency rule shall be effective 12:01 A.M., June 3, 1996, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

The secretary has promulgated the emergency rule to help alleviate financial hardships of mussel harvesters who must currently harvest and sell freshwater mussels on the same day. The provisions of the emergency rule will allow harvesters to store sacked and tagged mussels in a cold storage facility for up to a five day period prior to sale. The emergency rule also reduces daily notification requirements if the harvester remains in one location on a weekly basis.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

**Chapter 1. Freshwater Sports and Commercial Fishing
§161. Freshwater Mussel Harvest**

D. Species for Harvest

1. Only the following taxa may be legally harvested:
washboard *Megaoloniais nervosa*

pimpleback	<i>Quadrula spp.</i>
three ridge	<i>Amblema plicata</i>
bleufer	<i>Potamilus (Proptera) purpuratus</i>
Asian clam	<i>Corbicula fluminea</i>

2. a. Only specimens equal to or larger than the following minimum sizes shall be harvested:

washboard	4 inches
three ridge and bleufer	3 inches
pimpleback	2 3/4 inches
Asian clam	no size limit

b. Minimum size will be measured by passing the specimen through a ring or appropriate circular measuring device so designed as to allow undersized mussels to pass through the opening. There is no allowance for undersized shell. All mussels must be sized (graded) immediately after each dive and undersized shell returned to the mussel bed before the harvester moves his boat or begins another dive. All mussels harvested shall be removed from the water daily during daylight hours only. All mussels harvested must be sold on a daily basis unless stored and tagged as required herein. Mussels may not be stored in the water after sunset. All mussels not sold at the end of each day shall be sacked and tagged before official sunset. The tag shall contain the following information:

Name
Harvester permit number
Date harvested
Harvest location
Confirmation number

c. The mussel harvester may store mussels harvested at the end of each day in a cold storage facility prior to selling, provided the sacked mussels are properly tagged. Mussels shall not be stored longer than five days or after official sunset on Friday of each week.

G. Reporting

5. Each permittee harvesting mussels for sale is responsible for Department notification. The permittee shall notify the Department at a designated phone number (1-800-442-2511) at least four hours prior to harvesting any mussels. The permittee shall provide, at the time of notification, the parish and area to be fished. Such notification will be on a daily basis, unless the harvester fishes in the same area during a Monday through Friday period. However, even if harvesting in the same location for an extended period, weekly notification will be required. The permittee will be given a confirmation number at the time of notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:450.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, LR 19:510 (April 1993), amended LR 21:193 (February 1995), amended LR 22:374 (May 1996), LR 22:

James H. Jenkins, Jr.
Secretary

9606#007

DECLARATION OF EMERGENCY

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

Red Snapper Commercial Size Limit (LAC 76:VII.335)

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, the secretary of the Department of Wildlife and Fisheries, upon authority granted by resolution dated February 8, 1996 by the Louisiana Wildlife and Fisheries Commission under authority of R.S. 56:326.1, hereby finds that an imminent peril to the public welfare exists and accordingly adopts the following emergency rule. This emergency rule shall be effective at 12:01 a.m., June 18, 1996, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

The secretary has been notified by the Gulf of Mexico Fishery Management Council that on February 15, 1996, the council reviewed a request to lower the commercial red snapper minimum size, and has failed to find that emergency action to lower the present commercial minimum size limit was warranted. Therefore, the commercial minimum size limit will remain 15 inches total length in federal waters. The present action by the secretary shall provide consistent regulations within both federal and state jurisdictions. Action was not taken prior to this time by the department or commission due to the uncertainty surrounding the potential for changes in the commercial size limit in federal waters.

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

G. Species	Minimum Size Limits
1. Red Snapper	15 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 21:1267 (November 1995); LR 22:

James H. Jenkins, Jr.
Secretary

9606#008

Rules

RULE

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

Disclosure (LAC 46:XXI.1105)

Under authority of R.S. 37:2554 and with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners of Certified Shorthand Reporters is amending Part XXI of the Louisiana Administrative Code. This amendment requires the court reporter to disclose upon request any arrangements, financial or otherwise, with the party requesting the court reporter's services.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 11. Certificates

§1105. Disclosure

Upon request by any party present at a deposition each certified court reporter shall disclose the complete arrangement, financial or otherwise, made between the reporter or any person or entity making arrangements for the reporter's services and the attorney or other party making such arrangements with the reporter, person, or entity. Each reporter is responsible for inquiring about and discovering such information before accepting any assignment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2557.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 21:21 (January 1995), amended LR 22:445 (June 1996).

Gay M. Pilié
Executive Director

9606#045

RULE

**Department of Economic Development
Office of Commerce and Industry**

Enterprise Zone Program (LAC 13:I.Chapter 9)

Under the authority of R.S. 51:1785(5) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Commerce and Industry has amended the Enterprise Zone rules, LAC 13:I.Chapter 9.

The Board of Commerce and Industry has adopted rules in accordance with 1995, Act 194 which allows the Board of Commerce and Industry discretion in allowing a late filing of an advance notice of a project; and 1995, Act 581 which expands the number of enterprise zones from 35 percent to 40 percent and certain other clarifications and definitions

housekeeping changes). Additionally, 1995, Act 581 created Economic Development Zones. Due to the pervasiveness of the changes, all rules are to be repromulgated.

Title 13

ECONOMIC DEVELOPMENT

Part I. Office of Commerce and Industry

Subpart 1. Finance

Chapter 9. Enterprise Zone Program

§901. Scope

A. Intent of Program. To stimulate business and industrial growth in depressed areas of the state which are designated as enterprise zones; and, in certain other areas designated as Economic Development Zones by providing tax incentives for new jobs created in these areas and by providing assistance to businesses and industries.

B. Description of Program

1. Louisiana's Enterprise Zone Program is a package of tax credits and other incentives to businesses locating in specially designated Enterprise Zones or Economic Development Zones in both urban (1990 census population of 75,000 or greater) and rural (1990 census population of less than 75,000) parishes. Enterprise Zone incentives are in addition to many other state-sponsored incentives such as the Ad Valorem (property) tax exemption for manufacturing facilities and equipment, and the cost-free employee training program.

2. An Enterprise Zone is an officially designated area of high unemployment, low income and/or an area where a large number of residents are receiving some form of public assistance. For purposes of R.S. 51:1787(B)(4)(c) and (D)(4)(b) the term "some form of public assistance" shall include any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependant upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their employment.

3. An Economic Development Zone is a geographic area of contiguous real properties, defined by a visible boundary, designated as such by the state or the local governmental subdivision in which it is located and approved by the Board of Commerce and Industry. The location of an Economic Development Zone once defined is permanent (cannot be moved or swapped) and is owned or operated by the state or a political subdivision of the state or operated by an entity created by the state or a political subdivision of the state. Economic Development Zones will have been created by state statute and are defined to include the following:

- a. industrial park;
- b. business park;
- c. airport or air park;
- d. research park;
- e. research and development park;
- f. downtown development district;
- g. former federal facility (such as an old military base, etc., not a single building or small grouping of prior federally owned and occupied buildings. The immediate previous occupant of this facility must have been a federal governmental entity);

h. port (zone covers all contiguous real property actually owned by that port).

4. Each Economic Development Zone will submit an annual report which will compare activity in the last completed year to the previous year's activity.

5. Any business, except residential type development, can qualify for Enterprise Zone tax incentives. Manufacturing plants, service industries and commercial operations are equally eligible. Companies moving into an Enterprise Zone or Economic Development Zone and companies located in an area at the time the region is declared an Enterprise Zone or Economic Development Zone can both apply for benefits providing the minimum of five net new additional jobs are added (to the state within the first two years).

6. All parishes that have a 1990 population of less than 50,000 will be allowed to designate one additional Enterprise Zone which would not otherwise qualify, however, the additional zone's boundary must be contiguous with a (one) 1990 census tract (or block numbering area) block group boundary.

C. Incentives

1. A one-time tax credit of \$2,500 for each net new (Louisiana resident) employee (minimum of five within the first two years of the contract period) added to the payroll. The credit may be used to satisfy state income and corporate franchise tax obligations. If the entire credit cannot be used in the year created, the remainder may be applied against the income tax or franchise tax for the succeeding 10 taxable years, or until the entire credit is used, whichever occurs first.

2. In lieu of the tax credit of \$2,500, aviation and aerospace industries as defined in the 3720's and 3760's Standard Industrial Classification (SIC) manual are eligible for a one-time tax credit of \$5,000 for each net new (Louisiana resident) employee (minimum of five within the first two years of the contract period) added to the payroll. The credit may be used to satisfy state income and corporate franchise tax obligations. If the entire credit cannot be used in the year created, the remainder may be applied against income tax or franchise tax for the succeeding 10 years, or until the entire credit is used, whichever occurs first.

3. An additional \$2,500 tax credit is available to employers who hire Aid to Families with Dependent Children (AFDC) recipients. This tax credit is in addition to the \$2,500 for new jobs created. The AFDC participant must receive compensation which will disqualify such person from continued participation in the AFDC program and must be employed for two years to generate the additional tax credit. An employee shall be limited to two years participation under this program. This credit may be applied to any state income or franchise tax liability and shall be used for the taxable year in which the increase in average annual employment occurred. An employer shall not obtain a credit for more than 10 employees in the first year of participation in the program. An employer receiving this additional credit is limited to 10 years participation.

4. Refunds can be made of sales and/or use taxes, imposed by the state and imposed by its local governmental subdivisions, upon approval of the governing authority of the appropriate municipality, parish, or district, where applicable,

on all eligible purchases during the specified construction period (and transfers into Louisiana) of the material used in the construction of a building, any addition or improvement thereon and/or on equipment used exclusively on that site in the operation of that business enterprise. Refunds made by local governmental subdivisions can only be made of those sales/use taxes that are not dedicated to the repayment of a bonded indebtedness (sales/use taxes dedicated to schools are not refundable). Final requests for the payment of any refund must be filed, with the state (Department of Revenue and Taxation) and/or its local governmental subdivision no later than six months after the project's completion or six months after the date of the governor's signature on the contract, whichever is later.

D. Qualifications

1. To qualify for Enterprise Zone tax incentives in a parish designated as urban, a company must be located in a designated Enterprise Zone and must certify that a minimum of 35 percent of its new or expanded work force meet the requirements of §909.

2.a. In the case of Economic Development Zones or Enterprise Zones located in a parish designated as rural, a minimum of 35 percent of its new or expanded work force must meet the requirements of §911.

b. These requirements apply equally to companies moving into an Enterprise Zone or Economic Development Zone for the first time and to those which may have been located in an Enterprise Zone or Economic Development Zone at the time it was designated as such.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:446 (June 1996).

§902. Future Contract Availability

All businesses that held a valid contract for Enterprise Zone benefits prior to January 1, 1996, may apply for additional contracts for all location(s) which had a prior contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5) et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, amended LR 22:447 (June 1996).

§903. Use of Louisiana Manufacturers and Suppliers

The Board of Commerce and Industry request businesses and manufacturers receiving tax relief and their contractors, to consider giving preference to Louisiana manufacturers, suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:447 (June 1996).

§905. Endorsement Resolution

Applicants who intend to recover local sales/use taxes must submit a resolution, stating that fact, from the taxing body(s) which intends to refund sales/use taxes for the project, with their application for state benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:447 (June 1996).

§907. Documentation of Location

The business must document its location within the boundaries of a particular Enterprise Zone or Economic Development Zone by furnishing a 1990 U.S. Census map with the site's location clearly marked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:447 (June 1996).

§909. Qualified Employees - Urban Zones

A. A business located in an urban parish Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its new employees are Louisiana residents who:

1. are living in an Enterprise Zone in the same parish as the location of the business; or

2. are living in an Enterprise Zone in a contiguous parish if the business has 500 or more employees; or

3. were receiving some form of public assistance prior to employment (see definition of "some form of public assistance" §901.B.2); or

4. were considered unemployable by traditional standards, or lacking in basic skills.

a. The term "traditional standards" means anyone who qualifies as physically challenged.

b. The term "lacking in basic skills" means anyone who exhibits reading or writing or math skills below grade level 8.9.

B. An Annual Employee Certification must be filed by February 15, on all active contracts, if the business is to continue to qualify for additional benefits under this Chapter.

C. Employee count will be taken from the business's entire contiguous site for the purposes of calculating the tax credits generated. If the business has more than one site within the metropolitan area where the project is located, then the department may consider the total employee count at all those locations in calculating the total employee credits generated.

D. Monthly totals of permanent full-time employees will be averaged over a minimum of six months to determine the number of tax credits generated. Part-time employees may be averaged-in with the full-time employees after having completed a minimum of six months of continuous employment comprised of a minimum of 20 hours every week during that continuous period. Generally, the number of employees reported to the Louisiana Department of Labor will be used to calculate this average monthly total.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:447 (June 1996).

§911. Qualified Employees—Rural Enterprise Zones and Economic Development Zones

A. A business located in an Economic Development Zone or a rural parish Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its new employees are Louisiana residents who:

1. live in the same parish as the location of the business; or
2. were receiving some form of public assistance prior to employment; or
3. were considered unemployable by traditional standards, or lacking in basic skills.
 - a. The term "traditional standards" means any one who qualifies as physically challenged.
 - b. The term "lacking in basic skills" means anyone who exhibits reading or writing or math skills below grade 8.9.

B. An Annual Employee Certification must be filed by February 15, on all active contracts, if the business is to continue to qualify for additional benefits under this Chapter.

C. Employee count will be taken from the business' entire contiguous site for the purposes of calculating the tax credits generated. If the business has more than one site within the metropolitan area where the project is located, then the department may consider the total employee count at all these locations in calculating the employee credits generated.

D. Monthly totals of permanent full-time employees will be averaged over a minimum of six months to determine the number of tax credits generated. Part-time employees may be averaged-in with the full-time employees after having completed a minimum of six months of continuous employment comprised of a minimum of 20 hours every week during that continuous period. Generally, the number of employees reported to the Louisiana Department of Labor will be used to calculate this average monthly total.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:448 (June 1996).

§913. Reserved

§915. Arbitrary Termination of Employees

The board will not accept an application from a business which has terminated employees and rehired them or others in order to qualify for the benefits of this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:448 (June 1996).

§917. Items Eligible for Sales/Use Tax Refund

Only capitalized material used in the construction that becomes a part of a building, or any addition or improvement thereon, for housing any legitimate business, and capitalized machinery and equipment purchased, or transferred into Louisiana, within the construction period and used exclusively on that site and in that business will be considered eligible for refunds of sales/use taxes.

1. A partial listing of ineligible items on which sales/use taxes are not refundable are: per diem, labor, service contracts/labor, storage, freight, portable toilets or radios, utilities, permits and fees, office supplies, construction consumables (blades, drill bits, PVC sheeting, tape, gloves, dusk masks, etc.), all leases and rentals.

2. Lease-purchases are eligible for a sales/use tax refund if the sales/use taxes are paid at the beginning of the lease period and a copy of the lease-purchase agreement is sent to the Louisiana Department of Revenue and Taxation, for review, prior to the application being presented to the Board of Commerce and Industry for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:448 (June 1996).

§919. Filing of Applications

A. An advance notification of intent shall be filed prior to the beginning of construction. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. All incentives for the same project must be applied for on one advance notice and be identified by one project number. (It is not acceptable, for example, to apply for enterprise zone benefits and use the same project in a miscellaneous capital addition application for the industrial tax exemption (Ad Valorem) program. Both incentives must be applied for on one advance prior to the beginning of construction.) An advance notification, lacking a proper application, will expire two years after the "construction ending date" shown on the advance notification unless a written request for extension is received by the department prior to that date. Advance notices that do not meet program eligibility requirements will be rejected.

B. Applications must be filed with the Office of Commerce and Industry, P.O. Box 94185, Baton Rouge, Louisiana, 70804-9185 on the form prescribed, within three months after completion of construction or the beginning of operations, whichever is later.

C. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins or the first day that materials or equipment purchased for that project are received. Where there is no construction, the first day on which a new hire is made in connection with the project shall mean "beginning of construction" for the purposes of this Section.

D. Submission of Application Fee

1. An application fee shall be submitted with the application based on the following formula:

FEE = TOTAL ESTIMATED TAX RELIEF X.002

Total Estimated Tax Relief = state sales/use tax refund + local sales/use tax refund + jobs credit*.

Estimated Tax Relief x .2% (.002) = Application Processing Fee

(Anticipated from this application)

2. An application fee correction will be due if a project's scope is increased which would have resulted in a minimum of \$100 more fee than what has already been submitted, unless the maximum has been paid.

* Jobs credit - this amount is either the total amount you calculate by multiplying all the new jobs created within the five-year contract period by \$2,500 (\$5,000 for aerospace or AFDC credits that will be claimed) or the total income and franchise tax liability you anticipate for the next 10 years, whichever is less.

Note: Minimum Application Processing Fee \$200.

Maximum Application Processing Fee \$5,000.

3. All fees shall be made by check payable to: Louisiana Office of Commerce and Industry.

E. The business shall file, on the prescribed form, an affidavit of final cost showing a complete listing of building(s) and equipment and the cost of each item on the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. This affidavit is due to be filed either within six months after the completion of construction or when the signed original contracts are returned to the Office of Commerce and Industry whichever is later. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities claiming refunds in the project will be submitted in order that the property may be clearly identifiable.

F. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated tax relief or the fee submitted is incorrect. That document may be resubmitted within 30 days with the correct fee without penalty.

G. The advance notification, application, and the affidavit of final cost will not be considered officially received or accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been received and accepted, will not be refundable.

H. Applications must be submitted to the Office of Commerce and Industry, Financial Incentives Division at least 60 days prior to the Board of Commerce and Industry meeting where it is intended to be heard.

I. The applicant proposing a project with a construction period greater than two years is required to separate the project into phases, with no phase having a over a two-year construction period. Each construction phase shall require a separate application to be filed with the department. The applicant must comply with §935.A, requiring the creation of five new jobs on each application filed on a project. An application fee shall be submitted with each application filed based on the fee schedule in §919.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:448 (June 1996).

§921. Recommendations of the Secretaries of Economic Development and Revenue and Taxation

The Office of Commerce and Industry shall forward the application with its recommendations to the secretary of Economic Development and the secretary of Revenue and Taxation for their review. The secretaries of Economic Development and Revenue and Taxation shall submit their recommendations (the secretary of Revenue and Taxation shall submit a letter of no-objection in lieu of a letter of recommendation) in writing to the assistant secretary for Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:449 (June 1996).

§923. Application shall be Presented to the Board of Commerce and Industry

The Office of Commerce and Industry, Financial Incentives Division shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic Development and Revenue and Taxation and, if applicable, the endorsement resolutions outlined in §905 and shall make recommendations to the board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:449 (June 1996).

§925. Board of Commerce and Industry Enters into Contract

Upon approval of the application, the Board of Commerce and Industry may enter into contract with the applicant for refunds of the taxes allowed by R.S. 51:1781-1791. A copy of the contract shall be sent to the Department of Revenue and Taxation and the local governmental subdivision's taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:449 (June 1996).

§927. Refunds of Sales/Use Taxes

A. The contract will not authorize the applicant to make tax-free purchases from vendors. The refund of state sales/use taxes will be effected by the Department of Revenue and Taxation. Refunds will be secured by the filing of affidavits with the Department of Revenue and Taxation, Sales Tax Section, which must include the following:

1. a listing of purchases of eligible property that is intended to be used permanently on the project site and the contract number of the project. The listing must include a brief description of each item, the vendor's name, date of the sale, sales price and the amount of state sales/use tax paid. The items included in the listing must have been purchased by the owner of the project, or by a builder or other party that has contracted with the owner to provide materials and services for the project;

2. a certification that the materials included in the listing are reasonably expected to qualify for a refund under provisions of the statute;

3. a certification that the sales/use taxes have actually been paid on the items included in the listing.

B. The affidavit may be filed on official Department of Revenue and Taxation "Claim for Refund" forms or on other forms prepared by the applicant. After the Department of Revenue and Taxation has verified the information on the application, a refund check will be issued for the amount of state sales/use taxes paid.

C. Local sales/use tax refunds will be handled in the manner prescribed by the local taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:449 (June 1996).

§929. Businesses with Contracts must File State Franchise and Income Tax Returns

A. Businesses that have eliminated their Louisiana Income and/or Franchise tax liability by applying tax credits earned under this program shall file the same required forms and returns with the Department of Revenue and Taxation as would be required if no credits were taken. Each annual return will have the contract number, a certification attached showing the annual increase in employment, as determined by the company's average monthly employment (certified by the Office of Commerce and Industry) as reported to the Louisiana Department of Labor, and the unused credits from previous years. If total tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the return. Limited Liability Companies, Subchapter S Corporations, etc. must have the name of all owners shown in the contract in order for tax credits to flow through to said owners.

B. Partnerships and sole proprietorships shall file the same returns as would be required if the tax credits had not been granted. In addition, each return must include a profit and loss statement for a business claiming enterprise zone credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:450 (June 1996).

§931. Violations of Rules, Statutes, or Documents

On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the

rules, the contract documents, or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall determine if a full investigation is to be made on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation appears to substantiate a violation, the assistant secretary will present the subject contract to the board for formal board action. The businesses with contracts shall then remit, to the state, any and all sales tax refunds and taxes that would have been imposed but for the issuance of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:450 (June 1996).

§933. Affidavits Certifying Eligibility Filed Annually

On February 15 of each year, all businesses with active Enterprise Zone contracts are required to file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §909 or §911. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further tax credits will be granted. The Department of Commerce will notify the Department of Revenue and Taxation within 30 days after cancellation of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:450 (June 1996).

§935. Job Creation Requirements—Five New Jobs must be Created

A. For a business to qualify for the benefits of this Chapter, there must be an expansion in the total number of employees. A minimum of five new jobs credits must be generated within the first two years of the contract period.

B. A "new employee" shall be a Louisiana resident hired by the contractee, during the contract period, to fill a position for a job in this state which previously did not exist in the business. In no case shall the new employees allowed for purpose of the credit exceed the total increase in employment. A person shall be deemed to be so engaged if such person performs duties in connection with the operation of the business on:

1. a regular, full-time basis, (minimum of 30 hours per week, ability to accumulate paid sick and/or annual leave and the option of and possible payment, at least in part, of the employee's health insurance);

2. a part-time basis, provided such person is regularly performing such duties a minimum of 20 hours per week for a minimum of six continuous months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:450 (June 1996).

§937. Reserved

§939. Multi-tenant Operations

In the case of a facility where there are more than one occupant/tenant, an owner applicant for the benefits of this Chapter must either occupy a minimum of 33 percent of the total floor area of the building or the tenants are businesses that are new to the state or the tenants are Louisiana businesses that are increasing their number of locations within Louisiana with this location or the tenants are moving from another Louisiana location and will generate a minimum of five new job credits per §935.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§941. Alternate Designation of Enterprise Zones

A. A local governmental subdivision requesting the alternate designation (swap) of an Enterprise Zone must provide valid reason(s) for requesting the move and must have the approval of the Board of Commerce and Industry. The relocation of an Enterprise Zone will be on a one-time basis only unless there are extenuating circumstances which must have approval of the Board of Commerce and Industry. All requests to the Board of Commerce and Industry for the movement of an eligible enterprise zone must be accompanied by a single map showing the location of the old and the new zone areas. The following information must also accompany a request for a swap of enterprise zones:

1. the distance between the new zone location and the old location;
2. the number of workers who were or will be hired from the old zone location by the business for which the swap is made;
3. the distance of the new zone to the closest other zone.

B. In order for an applicant to meet the requirements of §909, those employees who are residents of an originally designated 1990 Census Tract - Block Group which was moved by virtue of a relocation may qualify as part of the 35 percent residency requirement.

C. The effective date of a relocation approved by the Board of Commerce and Industry shall be the date of passage affixed to the resolution by the local governing authority requesting the move.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), LR 13:289 (May 1987), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§943. Appeals and Petition Procedure

A. Applicants who wish to appeal an action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry, Financial Incentives Division, at least one month prior to the meeting of the Screening Committee of the Board of Commerce and Industry during which their appeal will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the board, must be submitted to the Office of Commerce and Industry, Financial Incentives Division, at least one month prior to the meeting of the board in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§945. Income and Franchise Tax Requirements

In order for a business to benefit from the income and corporate franchise tax benefits of this Chapter, an estimated five-year income and franchise tax liability must be provided by the applicant. This information will be used only to estimate the economic impact of the project to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§947. Exclusion of Residential Developments

A business engaging in residential-type development (construction, selling or leasing of single-family/multi-family dwellings, apartment buildings, condominiums, town houses, etc.) shall not be eligible for the benefits of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§949. Prohibit Local Fees and Prohibit Local Conflicting Employment Practices

No local governmental subdivision shall charge any fees or require any employment practices which conflict with state law as a precondition to authorize tax benefits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:451 (June 1996).

§951. Application Procedures

A. Applicants and/or their representatives will be notified of the date of the Screening Committee and board meeting at

which their application will be considered. The applicant should have an officer of authority present who is able to answer any questions the Screening Committee or board might have about the information contained in the application. In the event there is not a representative present, the application may be deferred or denied.

B. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days. The state will complete the execution. A fully executed original will then be forwarded to the applicant, the Louisiana Department of Revenue and Taxation and a copy sent to the proper local governmental taxing authority(s).

C. The taxing authorities of the local governmental subdivision(s) issuing the endorsement resolution should be contacted to determine their procedure for rebating their sales/use tax. The applicant will be contacted by the staff of the Department of Revenue and Taxation who will inform the applicant on the proper procedures to follow in order to obtain the state sales/use tax refund.

D. The sales/use tax refund portion of the contract will only be valid for the duration of the construction period as indicated in the application.

E. The business shall file, on the prescribed form, an Affidavit of Final Cost showing complete listing of building(s) and equipment and cost of each item of the project, together with a fee of \$100, for the inspection which will be conducted by the Office of Commerce and Industry staff. This affidavit is due to be filed either within six months after the completion of construction or when the signed original contracts are returned to the Office of Commerce and Industry which ever is later.

F. An annual employee certification report must be filed (§933), certifying compliance with either §909 or §911. This report will be filed annually by February 15. The Office of Commerce and Industry will supply the necessary forms and instructions to complete them.

G. Notification of any change which may affect the contract should be made to Office of Commerce and Industry. This includes, but is not limited to, changes in the ownership or operational name of the business holding a contract or the suspension, closing or abandonment of operations. Failure to report within three months can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:451 (June 1996).

R. Paul Adams
Director

9606#039

RULE

Board of Elementary and Secondary Education

Bulletin 1196—School Food Service Manager Certification

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to the School Food Service Manager Certification Program of Bulletin 1196, School Food Service Programs stated below:

Section 5.09. Exam Administration Procedures

Delete the following:

"A trainee failing any one of the exams three times will not be allowed to continue the Manager Certification Program."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191.

Carole Wallin
Executive Director

9606#035

RULE

Board of Elementary and Secondary Education

Bulletin 1196—School Food Service Severe Need Breakfast Program

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to the Severe Need Breakfast Program, under Section 3.22-03.B (Labor Cost) of Bulletin 1196, School Food Service Programs stated below.

Section 3.22-03.B - Labor Cost

Delete the last sentence of paragraph four under this section as stated below:

"Individual schools failing to meet this minimum in breakfast expenses will not be eligible to receive severe need breakfast funding in the coming year."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191.

Carole Wallin
Executive Director

9606#040

RULE

Board of Elementary and Secondary Education

**Technical College System Refund Policy
(LAC 28:I.1523)**

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted an amendment to the refund policy for the Louisiana technical colleges as stated below. This is an amendment to LAC 28:I.1523.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 15. Vocational and Vocational-Technical Education

§1523. Students

E. Fees for Louisiana Residents

3. Tuition and Fees

a. Enrollment or re-enrollment payments or acceptable evidence of indebtedness, shall be due upon registration or re-enrollment, as part of the enrollment process.

4. State Refund Policy for the Technical College System

a. A 100 percent refund of tuition and fees will only be made when classes are closed or canceled.

b. A 75 percent refund of tuition and fees will be made to students withdrawing during the first five instructional days of the term.

c. A 50 percent refund of tuition and fees will be made to students withdrawing during the sixth to tenth instructional days of the term.

d. No refund shall be made after the tenth instructional day of the term.

e. No refund shall be made for evening extension classes.

NOTE: In accordance with Title IV of the higher education amendments, refunds of tuition and fees for pell grant recipients shall be made to the Pell Grant Program and not to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(a), (10) (11); R.S. 17:1997.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 22:453 (June 1996).

Carole Wallin
Executive Director

9606#041

RULE

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

**Storage of Volatile Organic Compounds
(LAC 33:III.2103) (AQ137)**

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.2103 (AQ137).

This rule revision clarifies that the requirements for internal floating roofs must be implemented at the next maintenance turnaround unless that turnaround occurs after December 1, 2005. The previous language implied that the requirements could be met at either the next turnaround or by the deadline, at the choice of the facility. This revision also provides a definition of mechanical shoe seal and liquid mounted seal, where the terms had been open to misinterpretation before this revision. The nonattainment parishes are listed by name in this revision, so that they will be subject to the rule even if their attainment status is downgraded. Other changes are made to improve clarity and readability.

This revision is necessary because the rule has been misinterpreted by the facilities regarding 1) types of seal required, and 2) deadlines for internal floating roof compliance.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Liquids

A. No person shall place, store, or hold in any stationary tank, reservoir, or other container of more than 250 gallons (950 liters) and up to 40,000 gallons (151,400 liters) nominal capacity any volatile organic compound, having a true vapor pressure of 1.5 psia or greater at storage conditions, unless such tank, reservoir, or other container is designed and equipped with a submerged fill pipe or a vapor loss control system, as defined in Subsection E of this Section, or is a pressure tank capable of maintaining working pressures sufficient at all times under normal operating conditions to prevent vapor or gas loss to the atmosphere.

B. No person shall place, store, or hold in any stationary tank, reservoir, or other container of more than 40,000 gallons

(151,400 liters) nominal capacity any volatile organic compound having a true vapor pressure of 1.5 psia or greater at storage conditions unless such tank, reservoir, or other container is a pressure tank capable of maintaining working pressures sufficient at all times under normal operating conditions to prevent vapor or gas loss to the atmosphere or is designed and equipped with a submerged fill pipe and one or more of the vapor loss control devices described in Subsections C, D, and E of this Section.

C. Internal Floating Roof. An internal floating roof consists of a pontoon type roof, double deck type roof, or internal floating cover which will rest or float on the surface of the liquid contents and is equipped with a closure seal to close the space between the roof edge and tank wall. All tank gauging and sampling devices shall be gas tight except when gauging or sampling is taking place. If the organic compounds have a vapor pressure of 11.0 psia or greater under actual storage conditions, the requirements of Subsection F of this Section shall supersede the requirements of this Subsection. In the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, the following additional requirements apply:

1. The closure seal shall consist of either:

a. a liquid mounted seal consisting of a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank;

b. a mechanical shoe seal (metallic-type shoe seal) consisting of a metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof; or

c. two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

2. Each opening in the internal floating roof (except rim space vents and automatic bleeder vents) shall be provided with a projection below the liquid surface. In addition, each opening (except for leg sleeves, bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains) shall be provided with a cover equipped with a gasket. Automatic bleeder vents and rim space vents shall be gasketed and ladder wells shall be equipped with a sliding cover.

3. If the internal floating roof does not meet the specifications of this rule, then the specifications shall be met at the earlier of either the next scheduled maintenance turnaround (when deinventorying and degassing occurs) or December 1, 2005. Any request for an extension beyond December 1, 2005, shall be examined on a case-by-case basis and must be approved by the administrative authority*.

D. External Floating Roof. An external floating roof consists of a pontoon type roof, double deck type roof, or external floating cover which will rest or float on the surface of the liquid contents and is equipped with a primary closure seal to close the space between the roof edge and tank wall

and a continuous secondary seal (a rim mounted secondary) extending from the floating roof to the tank wall. In the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, the primary closure seal shall consist of a liquid mounted seal or a mechanical shoe seal, as defined in Subsection C.1.a and b of this Section. Installation of the primary and secondary seals in these parishes shall be within the same time requirements as stipulated in Subsection C.3 of this Section.

* * *

[See Prior Text in D.1]

a. the tank is a welded tank storing a VOC with a vapor pressure at storage conditions less than 4.0 psia and is also equipped with a liquid mounted seal, a mechanical shoe seal, or a seal deemed equivalent by the administrative authority*.

* * *

[See Prior Text in D.1.b]

c. a mechanical shoe seal is used in a welded tank which also has a secondary seal from the top of the shoe seal to the tank wall (i.e., a shoe-mounted secondary).

* * *

[See Prior Text in D.1.d-D.2.e]

3. Requirements for Covering Openings. All openings in the external floating roof, except for automatic bleeder vents, rim space vent, and leg sleeves, are to provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents must be closed at all times except when the roof is floated off or landed on the roof leg supports. Rim vents must be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Any emergency roof drain must be equipped with a slotted membrane fabric cover or equivalent cover that covers at least 90 percent of the opening. In the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Point Coupee, and West Baton Rouge, all covers, seals, lids, automatic bleeder vents, and rim space vents are to be gasketed.

4. Requirements for Guide Poles and Stilling Well Systems. Emissions from guide pole systems must be controlled for external floating roof storage tanks with a capacity greater than 40,000 gallons (approximately 151 m³) and which store a liquid having a total vapor pressure of 1.5 psia or greater. The requirements of this Paragraph shall only apply in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge.

a. Controls for nonslotted guide poles and stilling wells shall include pole wiper and gasketing between the well and sliding cover. Controls for slotted guide poles shall include a float with wiper, pole wiper, and gasketing between the well and sliding cover. The description of the method of control and supporting calculations based upon the Addendum to American Petroleum Institute Publication Number 2517 Evaporative Loss from External Floating Roof Tanks, (dated May 1994) shall be submitted to the administrative authority for approval prior to installation.

b. Alternate methods of controls are acceptable if demonstrated to be equivalent to the controls in Subsection D.4.a of this Section. The administrative authority* must approve alternate methods of control.

c. Installation of controls required by Subsection D.4 of this Section shall be required by November 15, 1996. Requests for extension of the November 15, 1996, compliance date will be considered on a case-by-case basis for situations which require the tank to be removed from service to install the controls and must be approved by the administrative authority*.

d. Control systems required by Subsection D.4 of this Section shall be inspected semiannually for rips, tears, visible gaps in the pole or float wiper, and/or missing sliding cover gaskets. Any rips, tears, visible gaps in the pole or float wiper, and/or missing sliding cover gaskets shall be repaired in accordance with this Paragraph in order to avoid noncompliance. Repairs must be initiated by ordering appropriate parts within seven working days after a defect listed in this Subparagraph is identified. Repairs shall be completed within three months of the ordering of the repair parts. However, if it can be demonstrated that additional time for repair is needed, the administrative authority may extend this deadline.

* * *

[See Prior Text in E-G]

1. existing and new storage tanks, located in any parish other than the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, used for crude oil or condensate and having a nominal storage capacity of less than 420,000 gallons (1,589,900 liters) unless such new tanks are subject to New Source Performance Standards;

2. tanks 420,000 gallons (1,589,900 liters) or greater, located in any parish other than the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, used to store produced crude oil or condensate prior to lease custody transfer unless such tanks are subject to New Source Performance Standards;

3. existing and new storage tanks in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge that are used for crude oil or condensate prior to lease custody transfer and that have a nominal storage capacity of less than 420,000 gallons (1,589,900 liters) unless such new tanks are subject to New Source Performance Standards; and

* * *

[See Prior Text in G.4-I.5]

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 15:1061 (December 1989), amended by the Office of Air Quality and

Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996).

Gus Von Bodungen, P.E.
Assistant Secretary

9606#018

RULE

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

Bacteriological Laboratory Certification

In accordance with R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health hereby adopts the following rule to establish a certification program to approve private laboratories to provide bacteriological analytical services needed to aid owners of individual water supplies in Louisiana in assuring that drinking waters are bacteriologically safe.

Because no funding has been allocated for this certification program and no fee is currently being collected for provision of the service, this program will be implemented pursuant to a prioritization of functions within the Division of Laboratories and to the extent permitted by current funding and staff resources. Higher priority workload activities will be accomplished first. The Division of Laboratories will consider each request for certification by a private laboratory in the order in which the requests are received, with prioritization given to the need for bacteriological analytical services in the particular locale. Each individual will be responsible for paying the private laboratory for the analytical services provided.

Laboratories seeking certification pursuant to this rule will be certified in accordance with regulations contained in a Department of Health and Hospitals manual for the certification of laboratories analyzing drinking water. A copy of the manual is available at the following locations:

REGION I	Metropolitan	3308 Tulane Avenue Fifth Floor New Orleans, LA 70119
REGION II	Capitol	1772 Wooddale Boulevard Baton Rouge, LA 70806
REGION III	Tech	206 East Third Street Drawer 1369 Thibodaux, LA 70301
REGION IV	Acadian	825 Kaliste Saloom, Suite 100 Lafayette, LA 70508
REGION V	Southwest	4240 Legion Street Box 16826 Lake Charles, LA 70615

REGION VI Central 1335 Jackson Street
Box 4207
Alexandria, LA 71301

REGION VII Northwest Allen Memorial State Office Building
Fifth Floor
1525 Fairfield Avenue
Shreveport, LA 71101-4388

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Bobby P. Jindal
Secretary

9606#037

RULE

Department of Health and Hospitals Office of the Secretary

Informed Consent—Maternity and Related Cases (LAC 48:I.2305)

(Editor's Note: The following rule is being repromulgated, as it was amended and published under an incorrectly numbered Section in Part I, Chapter 23 of LAC Title 48. This amended rule appeared in the January 1996 Louisiana Register, page 29.)

Title 48

PUBLIC HEALTH

Part I. General Administration

Chapter 23. Informed Consent

§2305. Maternity and Related Cases

- A. 1. - 8. ...
- B. Delivery (Cesarean Section)
1. infection;
 2. injury to bladder and/or rectum, including a fistula (abnormal hole) between bladder and vagina and/or rectum and vagina;
 3. hemorrhage possibly requiring blood administration and/or hysterectomy and/or artery ligation to control;
 4. sterility;
 5. brain damage, injury, or even death occurring to the fetus before or during labor and/or cesarean delivery whether or not the cause is known;
 6. uterine disease or injury requiring hysterectomy;
 7. pulmonary embolus;
 8. disfiguring scarring.

NOTE: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for that particular procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Medical Disclosure Panel, LR 18:1391 (December 1992); amended LR 19:1581 (December 1993); amended

by the Department of Health and Hospitals, Office of the Secretary, LR 22:29 (January 1996), repromulgated LR 22:456 (June 1996).

Bobby P. Jindal
Secretary

9606#038

RULE

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

Mental Health Rehabilitation

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following rule in the Medicaid Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by the 1995-96 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, and utilization review, and other measures as allowed by federal law."

Rule

The Department of Health and Hospitals, Bureau of Health Services Financing, has amended the rule entitled Mental Health Rehabilitation adopted April 20, 1993 (*Louisiana Register*, Volume 19, Number 4), by adopting the following provisions governing recipient eligibility, service delivery requirements and reimbursement methodology. All mental health rehabilitation services must be prior authorized by the bureau or its designee prior to the provision of these services.

I. Recipient Eligibility

Recipients must qualify as a member of the target population by meeting the definition of *seriously mentally ill* as defined by rule (*Louisiana Register*, Volume 20, Number 9) and by meeting the medical necessity criteria for mental health rehabilitation services as measured by the *North Carolina Functional Assessment Scale* for adults and the *Child and Adolescent Functional Assessment Scale* for children/youth. The measurement derived from these scales must indicate that the Medicaid recipient has a high need for mental health rehabilitation services as determined by the Office of Mental Health. Providers must include all information essential for a determination of level of need. All Medicaid recipients of mental health rehabilitation services must also meet the level of need required for the specific services they are receiving. As Medicaid recipients progress in their rehabilitation, services will be authorized and reimbursed at the medium and low levels of care.

The *North Carolina Functional Assessment Scale* provides a rating of the extent to which an adult recipient's mental health disorder is disruptive of functioning in each of six major areas: emotional health, behavior self/other, thinking, role performance, basic needs, and substance abuse. Each subscale is rated according to explicit criteria, and the

scores are summed to obtain a total functional assessment score.

The *Child and Adolescent Functional Assessment Scale* provides a rating of the extent to which a child/adolescent recipient's mental health disorder is disruptive of functioning in each of five major areas: moods/self-harm, behavior toward others, thinking, role performance, and substance abuse. Two additional subscales assess the extent to which the youth's care giver is able to provide for the needs and support of the youth. Each subscale is rated according to explicit criteria, and the scores are summed to obtain a total functional assessment score for both the child and the care giver.

II. Provider Participation

A. The enrolled mental health rehabilitation provider or case management provider must apply to the BHSF through the Office of Mental Health for transitional certification as a mental health rehabilitation provider. The enrolled provider has the ultimate responsibility for the delivery of all services, including those delivered through contractual agreement(s). The enrolled provider must meet the following requirements and assurances and submit the information to the regional Office of Mental Health:

1. completed PE-50;
2. completed disclosure of ownership form;
3. statement identifying the population to be served: adults with serious mental illness, children with emotional/behavioral disorders or both;
4. résumés of the current mental health rehabilitation program director, the psychiatric director, and all clinical managers, including documentation of licensure;
5. identification of the agency's main office, all offices billing with the main office's Medicaid provider number and all regions in which the agency conducts business;
6. proof of general liability of at least \$100,000 and professional liability insurance of at least \$300,000. The certificate holder shall be the Department of Health and Hospitals to receive notice of insurance changes;
7. assure that the following requirements are met and/or agreed to as evidenced by completion of the "Request for Mental Health Rehabilitation Transitional Certification" form provided by the BHSF.

a. assure that the enrolled MHR agency will provide clinical management, the MHR assessment and the MHR service agreement for all recipients served;

b. have the capacity to provide the full range of services to the full range of recipients served by the Mental Health Rehabilitation Program;

c. assure that all services provided by the MHR agency or through contractual arrangement are provided in conformity with all applicable federal and state regulations.

d. assure that all the service delivery staff meets the requirements as specified in the Mental Health Rehabilitation Program Manual.

e. assure that the enrolled agency and subcontractors will participate in the Mental Health Rehabilitation data system and provide data on a weekly basis to the Medicaid office or its designee;

B. The enrolled MHR agency must submit the "Request for Mental Health Rehabilitation Transitional Certification" to

the regional Office of Mental Health. If the enrolled agency fails to meet the standards or does not submit the proper documentation, the agency will not be authorized to bill for services delivered after October 31, 1995. Those agencies that have submitted applications for enrollment to the BHSF prior to October 31, 1995, but have not received a Medicaid provider number may also apply for transitional certification by following the guidelines outlined above. Agencies applying for enrollment after October 31, 1995 will have to meet all licensing requirements, current enrollment requirements, participate in an on-site visit by the regional Office of Mental Health and meet the transitional certification requirements.

C. Enrolled case management agencies may also be eligible for transitional certification as a mental health rehabilitation provider by applying for transitional certification through the regional Office of Mental Health. The agency must meet the standards for transitional certification and submit the "Request for Mental Health Rehabilitation Transitional Certification" to the regional Office of Mental Health no later than the close of business June 30, 1996. The agency will not be considered an enrolled MHR agency until the approval of the transitional certification has been granted.

D. Transitional certification for those agencies who meet the requirements outlined above will be effective until July 1, 1996 or until the on-site certification process is completed, whichever occurs first.

III. Administrative Requirements

A. Psychiatric Director. Each agency is required to have a licensed psychiatrist on staff as the psychiatric director. The director is required to provide a minimum of two hours of on-site clinical supervision/consultation per month for every 10 recipients.

B. Clinical Manager. Each agency is required to have a clinical manager. The clinical manager is a licensed mental health professional who is responsible for an identified caseload. The clinical manager must be an employee of the mental health rehabilitation agency. The clinical manager provides ongoing clinical direction. The clinical manager must provide the following minimum requirements for clinical management:

1. The clinical manager must have one face-to-face contact with the adult recipient or two face-to-face contacts with the child and family every 30 days.

2. The clinical manager must provide at least five hours of clinical management for adults and 12 hours of clinical management for children during each 90-day action strategy period.

3. The clinical manager must document at least two contacts with other community providers or significant others each month.

4. The clinical manager must provide lead responsibility for the MHR assessment team.

5. The clinical manager must provide lead responsibility for development and oversight of the MHR agreement.

6. The clinical manager must assure that all activity plans are developed and implemented.

7. The clinical manager must write the Quarterly Summary Progress Report.

8. The clinical manager provides oversight and access and coordination of all services for the MHR recipient. This includes but is not limited to the provision of the following:

a. assurance of active recipient involvement in all aspects of care;

b. coordination and management of all services provided through the MHR agency;

c. access and coordination of services provided through non-MHR agencies.

C. Staffing Definitions

1. *Mental Health Service Delivery Experience*—mental health service delivery experience at the professional or paraprofessional level delivered in an organized mental health or psychiatric rehabilitation setting such as a psychiatric hospital; day treatment or mental health case management program, or community mental health center. Evidence of such service delivery experience must be provided by the agency in which the experience occurred.

2. *Supervised Experience*—experience supervised by a mental health professional is mental health services provided under a formal plan of supervision documented by a plan of professional supervision. Evidence of such supervised experience must be provided by the supervising professional and/or agency in which the supervision occurred.

3. *Core Mental Health Disciplines*—academic training programs in psychiatry, psychology, social work, and psychiatric nursing.

4. *Mental-Health-Related Field*—academic training programs based on the principles, teachings, research and body of scientific knowledge of the core mental health disciplines. To qualify as a related field there must be substantial evidence that the academic program has a curriculum content in which at least 70 percent of the required courses for graduation are based on the knowledge base of the core mental health disciplines. Programs which may qualify include but are not limited to sociology, criminal justice, nursing, marriage and family counseling, rehabilitation counseling, psychological counseling, and other professional counseling.

5. *Licensed Mental Health Professional (LMHP)*—an individual who meets one of the following education and experience requirements:

a. a physician who is duly licensed to practice medicine in the state of Louisiana and has completed an accredited training program in psychiatry; or

b. a psychologist who is licensed as a practicing psychologist under the provisions of R.S. 28:2351-2370; or

c. a social worker who holds a master's degree in social work from an accredited school of social work and is a board-certified social worker under the provisions of R.S. 37:2701-2718; or

d. a nurse who is licensed to act as a registered nurse in the state of Louisiana by the Board of Nursing, and is a graduate of an accredited master's level program in psychiatric nursing plus has two years of post-masters supervised experience in the delivery of mental health services; or has a master's degree in nursing or a mental-health-related field plus

two years post-master's supervised experience in the delivery of mental health services; or has a bachelor's degree in nursing plus four years of post-bachelor's degree, supervised experience in the delivery of mental health services; or

e. a licensed professional counselor who is licensed as such under the provision of R.S. 37:1101-1115 plus has two years of post-master's supervised experience in the delivery of mental health services.

IV. The Mental Health Rehabilitation Assessment

The mental health rehabilitation assessment for children/youth and mental health rehabilitation assessment for adults includes an initial MHR assessment and one update, development of an initial service agreement and one update of the service agreement.

A. The MHR assessment is a comprehensive, integrated series of assessment procedures conducted largely in the recipient's or his family's daily living environments to determine strengths and needs with regard to functional skills and environmental resources that will enable the mental health rehabilitation recipient to attain a successful and satisfactory community adjustment. The assessment and service agreement must be submitted in the format and utilize the protocols defined by the Office of Mental Health.

B. Assessment procedures at a minimum include but are not limited to the following:

1. review of the standardized clinical evaluation(s) and other pertinent records;

2. face-to-face strengths assessment with the recipient or child/family which must be completed by the clinical manager. The strengths assessment must be in the format defined by the Office of Mental Health;

3. key informant interview(s) (for example: family member, teacher, friend, employer, job coach). For children an interview with the teacher is required;

4. observation(s) in natural settings(s) (for example: home, school, job site, community). For children an observation in the home and school is required;

5. interview by licensed physician to assess past history of all medications and current medication, specifying issues of polypharmacy and untoward responses;

6. standardized functional assessment scale;

7. integrated summary and prioritized strengths/need list must be organized by the life areas;

8. update of the MHR assessment.

C. The assessment team must include the clinical manager and a licensed physician, at a minimum. Other professionals and paraprofessionals are included as indicated by recipient/family need.

D. The appropriate clinical evaluation submitted by providers for prior authorization of mental health rehabilitation services (MHR) must meet the following criteria. The appropriate clinical evaluation must be completed by either a Louisiana licensed (1) a licensed mental health professional social worker and a board-certified or board-eligible psychiatrist or licensed psychologist; or (2) board-certified or board-eligible psychiatrist; or (3) licensed psychologist. This evaluation must include a face-to-face interview with the recipient by all professionals signing the evaluation and must provide detailed descriptive information

about the recipient's functional status in life areas as defined by the Office of Mental Health. The information must be submitted on the appropriate clinical evaluation form which is available through the regional Offices of Mental Health. Key symptoms and functional behaviors are to be identified in sufficient detail so that the impact on the consumer's functioning can be judged independently by an outside reviewer.

V. The Mental Health Rehabilitation Service Agreement

The service agreement is a written document which identifies the goals, objectives, action strategies and services which have been agreed to by the MHR agency and the adult recipient or the child and family. The service agreement must be based on the mental health rehabilitation assessment and must address at least two life areas. The agreement is to be submitted in the format defined by the Office of Mental Health and must be approved by the Office of Mental Health prior to the delivery of services. The service agreement is developed by a team which at a minimum consists of the clinical manager, a physician, and the recipient or the child and family. The clinical manager has lead responsibility for oversight of the process.

VI. Service Package

A service package is a defined range of interventions appropriate for a determined level of need for care (high, medium and low). The service packages are derived from the following menu of services:

- clinical management;
- individual intervention (child/youth only);
- supportive counseling (adults only);
- parent/family intervention (child/youth only);
- group counseling;
- medication management;
- behavior intervention plan development (child/youth only);
- individual psychosocial skills training;
- group psychosocial skills training;
- service integration.

The individualized mix of services for any individual is specified on the 90-day action strategy of the MHR service agreement. The MHR service agreement is derived from the MHR assessment.

VII. Reimbursement

Reimbursement is made by a prospective, negotiated and noncapitated rate based on the delivery of services as specified in the service agreement and the service package as required for the adult and child/youth populations.

Adult assessment/service agreement	\$ 700
Child/youth assessment/service agreement	\$ 800

The MHR assessment/service agreement is reimbursed based on the approval of a MHR assessment and MHR service agreement and is paid semiannually.

Adult:		Child/Youth:	
High need	\$1,300	High need	\$1,375
Medium need	\$ 550	Medium need	\$ 800
Low need	\$ 250	Low need	\$ 250

Services are reimbursed based on services specified in the 90-day action strategy plan and are paid monthly contingent upon the delivery of 80 percent of the prorated 90-day

services approved in the MHR service agreement. As Medicaid recipients progress in their rehabilitation services and the level of need decreases, services will transition from the high to medium and/or low level of need. Reimbursement will be made in the amounts specified above for the medium and low levels of need as determined by the bureau or its designee.

Reimbursement for the delivery of services under the Mental Health Rehabilitation Program and Optional Targeted Case Management Program is not provided to the same Medicaid recipient.

VIII. Crisis Services

The MHR provider is required to maintain a 24-hour on-call system with the capacity to provide 24-hour face-to-face services. With respect to a psychiatric emergency, the MHR physician must first screen the recipient and determine if referral to the Office of Mental Health Crisis Response System is warranted. The format for screening and referral is defined by the Office of Mental Health.

Bobby P. Jindal
Secretary

9606#047

RULE

**Department of Public Safety and Corrections
Board of Private Investigator Examiners**

Apprentice Licensing (LAC 46:LVII.512)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505(B)(1), the Department of Public Safety and Corrections, Board of Private Investigators Examiners, hereby amends LAC 46:LVII.Chapter 5, by adding §512 pertaining to licensing of apprentice private investigators.

This rule and regulation is an amendment to the initial rules and regulations promulgated by the State Board of Private Investigator Examiners.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LVII. Board of Private Investigator Examiners
Chapter 5. Application, Licensing, Training,
Registration and Fees**

§512. Licensing of Apprentices

A. A licensed agency and a previously unlicensed individual may apply for the licensing of the previously unlicensed individual as an apprentice as follows:

1. A letter of intent to sponsor shall be sent to the board by the licensed agency, along with the apprentice application, indicating the agency's intent to accept the sponsorship and responsibility for the apprentice applicant.

2. Upon receipt of a letter of intent to sponsor and the completed application from the apprentice candidate, the chairman of the board shall issue a letter acknowledging the receipt of same, provided the apprentice license applicant satisfies the requirements of R.S. 37:3507 and all fees

required by law have been paid. The letter shall serve as a temporary apprentice registration card until the board meets to consider the application and the issuance of the official apprentice registration card.

3. No agency may sponsor any more than six apprentice investigators at any one time; and no person shall be licensed as an apprentice if he has ever been licensed as an apprentice before.

B. An apprentice registration card shall be effective for one year only; and the apprentice shall operate as a private investigator only under the immediate direction, control and supervision of the sponsoring agency during that time. For the first three months of apprenticeship, the apprentice must be accompanied on all investigative work regulated by R.S. 37:3500 et seq., by a licensee with three years experience.

C.1. The sponsoring agency shall be directly responsible for the supervising and training of the apprentice, and shall maintain, on a form furnished by the board, a separate personnel file containing: the types of cases worked; the date the cases were worked; the number of hours worked on each case; and the name of the supervisor accompanying licensee. These forms shall be subject to inspection by the board on demand.

2. In addition, the sponsoring agency shall be responsible for educating the apprentice in the following areas:

- a. knowledge of the private investigator business and the laws regulating same, including R.S. 37:3500 et seq., and the rules and regulations regulating the practice as a private investigator in this state;
- b. general federal and state constitutional principles;
- c. general information regarding invasion of privacy laws, search and seizure laws and related procedures, and state concealed weapons law;
- d. surveillance techniques;
- e. photograph principles: video and still; and
- f. general information regarding the assembling of public information from clerk of court offices and court records.

D.1. The apprentice registration card shall remain valid for only one year from the date of the letter serving as the temporary registration card or issuance of the official apprentice registration card, whichever is first; and only so long as the apprentice is working under the supervision of a licensed sponsor agency.

2. During the apprenticeship period, the apprentice must attend the 40-hour training course approved by the board.

3. An apprentice license may be transferred to another agency provided the other agency meets all the requirements of law and this Section of the rules and regulations, particularly the filing of the letters of intent, regarding sponsorship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505A(3) and B(1); and R.S. 37:3514A.(4)(a).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:459 (June 1996).

Gary Hyatt
Chairman

9603#058

RULE

Department of Revenue and Taxation Excise Taxes Division

Sale and Use of Dyed Special Fuels (LAC 61:I.Chapter 33)

Under the authority of R.S. 47:802.1(C) and R.S. 47:814(A) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Excise Taxes Division, amends Chapter 33 of Title 61 of the Louisiana Administrative Code to reflect recent amendments to R.S. 47:803, 812, 814 and the enactment of R.S. 47:802.1.

Act 603 of the 1995 Regular Legislative Session amended R.S. 47: 803, 812, and 814 to make provision for the use of dyed special fuels and for penalties associated with the improper on-road use of the dyed fuel. Also enacted was R.S. 47:802.1 to authorize a mechanism for a credit or refund of taxes paid on fuel purchased for nontaxable use when and only when untaxed dyed fuel is not available and to direct the Excise Taxes Division to promulgate rules necessary to regulate these activities.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered By the Secretary of Revenue and Taxation

Chapter 33. Petroleum Products: Special Fuels Tax

Subchapter A. Retail Dealers of Special Fuels

* * *

§3307. Sale of Dyed Special Fuels

A. All suppliers and dealers of special fuels who have separate facilities for storing dyed special fuels on which no fuel tax has been paid, other than liquefied petroleum gas or compressed natural gas, shall clearly mark the storage facility with notice that the fuel is dyed and/or chemically marked. Such marking shall conform to requirements of R.S. 47:804(D) or as provided by 26 U.S.C. 4082 and the regulations promulgated thereunder. Dyed special fuels are to be used for nontaxable purposes only.

B. Any supplier or dealer of special fuels or any other person who shall sell or offer to sell dyed and/or chemically marked special fuels for any use other than a nontaxable use shall be in violation of R.S. 47:812 and shall be subject to a penalty. The penalty increases with subsequent violations.

C. Exception: Fuel sold for use in those vehicles which are subject to state tax and allowed to use dyed fuel on the highway under 26 U.S.C. 4082 or the regulations adopted thereunder. This use shall not be considered a violation of R.S. 47:812.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:812.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22:460 (June 1996).

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Subchapter B. Users of Special Fuels

* * *

§3355. Refunds or Credits; Undyed Diesel Fuel Used for Other than Highway Purposes

The intent of R.S. 47:802.1 is to provide a mechanism for a credit or refund of taxes paid on fuel purchased for nontaxable use only when untaxed dyed fuel is not available.

1. A registration form must be completed and submitted to the secretary of the Department of Revenue and Taxation for approval prior to first purchasing any tax-paid special fuel for a nontaxable use when dyed fuel is not available, if the user intends to obtain a credit or file for a refund of special fuel taxes paid on fuel purchased for nontaxable use. Upon approval, a permit certificate will be furnished to the applicant.

2. Users may assign, to the approved licensed suppliers who sold or delivered the fuel to the user, the right to their refund of the taxes paid on special fuels. The licensed supplier to whom assignment is made must have made application to and received approval from the Department of Revenue and Taxation prior to being able to issue a credit to the user for the amount of tax. Approved licensed suppliers must claim the credit on the return filed for the reporting period in which the fuel was purchased and credit given. Users who opt to assign the right to their refund to the approved licensed suppliers who sold or delivered the fuel to the user must submit a new registration for approval prior to filing their own refund claims.

3. Users who file their own refund claims must file the claims with the secretary within 30 days after the end of the quarter in which the fuel purchases were made. The claims must set forth the amount of fuel purchased during the quarter with the amount of tax paid, the original fuel invoices, the licensed suppliers from whom purchased, and the purpose for which the fuel was used. The claim must also contain, on a form to be supplied by the department, a list of highway and nonhighway vehicles in which fuel was used. Fuel used to power reefers, power take-off units or similar auxiliary equipment is not eligible for refund or credit when these items are powered off the main fuel tanks.

4. If a claimant does not submit a claim during a period of 12 consecutive months, 60 days after the end of such period, his registration will be voided and removed from the files, unless notification is received that claimant expects to make a claim in the near future. When a registration has been voided for this reason, a new registration must be submitted before purchasing special fuels on which a refund will be claimed.

5. Not more than one claim may be filed for any particular period and all claims must be signed by the claimant or his authorized agent. When submitting a claim, only the designated claim form should be completed and returned to the Department of Revenue and Taxation. A seller's invoice must be submitted with the claim. In order to be acceptable for review, all invoices submitted must have the amount of special fuel taxes paid marked by the dealer before a refund can be made.

6. Claims that are returned to the claimant for correction must be corrected and returned to the Department of Revenue and Taxation within 30 days.

7. Adequate records must be maintained by refund claimants to disclose the nature of the work performed, number of gallons used, and the type of vehicle or equipment in which the special fuel was used. Each refundable purchase of tax paid fuel intended for a nontaxable use must be invoiced by the dealer separately.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:802.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22:461 (June 1996).

§3357. Use by State Agencies, Parish and Municipal Governments, and Other Political Subdivisions

A. Clear, dyed or chemically marked fuel purchased by state agencies, parish and municipal governments and other political subdivisions intended for on-road use is subject to state fuel tax.

B. When dyed fuel is not available, clear fuel intended for off-road use may be purchased without state tax from a contracted supplier upon presentation of a certificate issued by the Louisiana Department of Revenue and Taxation authorizing said purchase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:803.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22:461 (June 1996).

§3359. Sales; Uses of Dyed Fuel

A. All users who have separate facilities for storing dyed special fuels on which no fuel tax has been paid, other than liquefied petroleum gas or compressed natural gas, shall clearly mark the storage facility with notice that the fuel is dyed and/or chemically marked. Such marking shall conform to requirements of R.S. 47:804(D) or as provided by 26 U.S.C. 4082 and the regulations promulgated thereunder. Dyed special fuels are to be used for nontaxable purposes only.

B. Any supplier, dealer or user of special fuels or any other person who shall sell or offer to sell dyed and/or chemically marked special fuels for any use other than a nontaxable use shall be in violation of R.S. 47:812 and shall be subject to a penalty. The penalty increases with subsequent violations.

C. Exception: Fuel sold for use in those vehicles which are subject to state tax and allowed to use dyed fuel on the highway under 26 U.S.C. 4082 or the regulations adopted thereunder. This use shall not be considered a violation of R.S. 47:812.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:812.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22:461 (June 1996).

§3361. Use by Farmers

A. In the case of farmers who operate farm use trucks which use undyed special fuels other than liquefied petroleum gas and compressed natural gas in operating for both taxable and nontaxable purposes, the secretary shall, when requested, reach an agreement with the farmer wherein the amount of fuel used in each truck shall be estimated and the tax paid each month on the basis of the estimate.

B. The minimum estimate will be no less than 75 gallons per month per vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:814.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Excise Taxes Division, LR 22:462 (June 1996).

John N. Kennedy
Secretary

9606#046

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Livestock Sanitary Board

Brucellosis Eradication—Approved Vaccine (LAC 7:XXI.11734-11737)

In accordance with provisions of the Administrative Procedure Act, the Department of Agriculture and Forestry, Livestock Sanitary Board, proposes to adopt rules amending the regulations pertaining to vaccination of heifer calves for Brucellosis.

These rules comply with and are enabled by R.S. 3:2091 et seq.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 117. Livestock Sanitary Board

Subchapter B. Cattle

§11734. Brucellosis Vaccination and Fee

A. Henceforth, all nonvaccinated heifer calves between four and 12 months of age must be vaccinated with USDA approved Brucellosis vaccine prior to being sold and there is hereby established and henceforth there shall be a fee to be paid by the Louisiana livestock auction markets of \$2 for each heifer calf vaccinated for Brucellosis, which fee shall be

known as the Brucellosis vaccination fee.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2221 and R.S. 3:2223.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 15:75 (February 1989), amended LR 22:

§11735. Livestock Auction Market Requirements

All cattle which are sold or offered for sale in livestock auction markets must meet the general requirements of LAC 7:XXI.11709 and the following specific requirements:

A. Brucellosis

1. - 3. ...

4. a. All nonvaccinated heifer calves, between four and 12 months of age, must be vaccinated with USDA approved Brucellosis vaccine prior to being sold.

4. b. - 7. b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:2221 and R.S. 3:2228.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:237 (March 1985), amended LR 11:615 (June 1985), LR 12:501 (August 1986), LR 12:598 (September 1986), LR 13:556 (October 1987), LR 14:220 (April 1988), LR 14:695 (October 1988), LR 15:810 (October 1989), LR 17:30 (January 1991), LR 18:837 (August 1992), LR 22:

§11737. Governing the Sale of Cattle in Louisiana by Livestock Dealers

All cattle which are sold or offered for sale by livestock dealers must meet the general requirements of LAC 7:XXI.11711 and the following specific requirements:

A. Brucellosis

1. - 2. ...

3. a. All heifer calves between four and 12 months of age must be vaccinated with USDA approved Brucellosis vaccine, prior to being sold.

3. b. ...

B. Tuberculosis. No cattle shall be purchased from tuberculosis quarantined herds unless moving directly to slaughter and must be "S" branded and accompanied by a VS Form 1-27.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093, R.S. 3:562, R.S. 3:2221 and R.S. 3:2228.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:615 (June 1985), amended LR 12:502 (August 1986), LR 13:558 (October 1987), LR 14:221 (April 1988), LR 17:31 (January 1991), LR 18:838 (August 1992), LR 22:

All interested persons may submit written comments on the proposed rule through July 26, 1996, to Dr. Maxwell Lea, Jr., Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. A public hearing will be held on these rules on July 26, 1996, at 8 a.m. at the address listed above. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at the hearing. No preamble concerning the proposed rules is available.

Dr. Robert McManus
Vice Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Brucellosis Program—Approved Vaccine**

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

There would be an initial cost to state governmental units of \$21,000 as a result of this rule change. It is anticipated that this amount will decrease significantly beginning fiscal year 1998 as Louisiana moves forward in the Brucellosis Program.

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

It is estimated that there will be no effect on revenue collections of state or local government units.

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

It is estimated that there would be a savings to Louisiana cattlemen of \$260,000 during fiscal year 1997. This amount would decrease in subsequent years as the state moves to a Class Free Brucellosis status and the use of vaccine decreases.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule change will have no effect on competition and employment.

Bob Odom
Commissioner
9606#055

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Business and Office Education

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, revised certification requirements for business and office education. These revisions printed below are an amendment to Bulletin 746, Louisiana Standards for State Certification Standards and Regulations.

Business and Office Education

A. Business Education

A minimum of 36 semester hours distributed in the following areas:	Semester Hours
Keyboarding or equivalent based on proficiency	6
Accounting	6
Computer Applications	6
Related courses in business which are essential to a well-rounded foundation (i.e., business law, economics, finance, management, marketing, accounting, and computer information systems)	9

Related courses in office systems (i.e., records management, office management, office procedures, office systems planning, business communications, and telecommunications)	6
Methods of Teaching Business, Vocational or Secondary Education	3

B. Cooperative Education

Above curriculum in (A) plus:	Semester Hours
Principles and/or Philosophy of Vocational Education	3
Cooperative Education Methods (Methods and/or Techniques of Teaching Cooperative Education)	3

A minimum of 1,500 hours of employment in business and office occupations approved by the Office of Vocational Education, Department of Education. Partial fulfillment of this work experience may be met through completion of a practicum for credit (supervised work experience) offered by the institution concerned. Two hours will be credited for each hour of supervised practicum work experience.

Mandatory September 1, 2000-2001.

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

Interested persons may submit comments in writing until 4:30 p.m., August 9, 1996 to: Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Business and Office Education**

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 proposed rule will revise the course requirements for certification to teach business and

office education to reflect current technology with no change in the total semester hours required.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no effect on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
9606#054

Richard England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Certification Requirements for Speech, Language and Hearing Specialists and Speech/Language Pathology Assistants-Level 1

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, revised Certification Requirements for Speech, Language and Hearing Specialists and Speech/Language Pathology Assistant - Level 1. These revisions are an amendment to Bulletin 746, Louisiana Standards for State Certification Standards and Regulations.

Bulletin 746

Types of Certificates for Speech, Language, and Hearing Specialists

Type C (Effective for all entering freshmen fall semester of 1985). A Type C certificate is based upon completion of an educational training program, approved by the State Board of Elementary and Secondary Education, in disorders of communication (speech, language, and hearing disorders and severe language disorders) with credits distributed as hereinafter provided, including general, professional and specialized academic education, and a master's degree in disorders of communication (speech, language, and hearing disorders and severe language disorders).

All speech, language, and hearing specialists certified prior to the fall semester, 1990, will be governed by the following provisions:

Level 1. A Level 1 certificate is issued to an individual who earns a baccalaureate degree including completion of an educational training program approved by the State Board of Elementary and Secondary Education, in disorders of communication (speech, language, and hearing disorders and severe language disorders), with credits distributed as hereinafter provided, including general, professional, and specialized academic education areas. Certification at this level requires direct supervision.

When a master's degree (or equivalent as hereinafter provided) is earned in disorders of communication (speech, language, and hearing disorders and severe language disorders), the Level 1 designation requiring direct supervision shall be removed upon request.

Definition of equivalency of master's degree: Thirty semester hours beyond the bachelor's degree that could count toward a master's degree in speech pathology and audiology;

no fewer than 24 of the 30 semester hours shall be in professional content courses in speech pathology, language pathology, and audiology.

Certification Requirements for Speech, Language, and Hearing Specialists

General Education*. A minimum of 46 semester hours of credit designed to develop a broad cultural background is required. The work must be taken in the five areas listed below:

1. English: A minimum of 12 semester hours, including at least three semester hours in grammar and three semester hours in composition;

2. Social studies (anthropology, economics, geography, history, political science, sociology, and survey of social science): A minimum of 12 semester hours, including at least three semester hours in United States history;

3. Science: A minimum of 12 semester hours, including at least three semester hours in biological science, three semester hours in physical science and three semester hours in anatomy and physiology;

4. Mathematics: A minimum of six semester hours;

5. Health and physical education: A minimum of four semester hours.

*Universities which wish to require three hours of computer science of students should require a minimum of six hours in mathematics and a minimum of nine hours in science.

Professional Education. A minimum of 33 semester hours of credit in professional teacher education courses is required. The work must be taken in the four areas listed below:

1. at least three semester hours of history of education, introduction to education, foundations of education, and/or philosophy of education;

2. at least three semester hours in educational psychology and/or principles of teaching;

3. at least nine semester hours in student teaching in speech, language, and hearing therapy with individuals from birth to 22 years of age, in the public and nonpublic schools, supervised according to certification requirements for Supervisor of Student Teachers according to p. 68B of Bulletin 746 and according to the mandates of R.S. 17:7.1 and R.S. 17:7.2;

4. at least 18 semester hours of professional education to include the following:

- | | | |
|----|--|------------------|
| a. | adolescent psychology | 3 semester hours |
| b. | child psychology | 3 semester hours |
| c. | methods of public school speech, hearing, and language therapy | 3 semester hours |
| d. | introduction to exceptional children | 3 semester hours |
| e. | teaching of reading | 3 semester hours |

Special Education Requirements for Speech, Language, and Hearing Services

1. Basic Requirements

- *a. Educational and/or psychological tests and measurements 3 semester hours
- *b. Counseling methods for teaching or psychological counseling 3 semester hours
- *c. Abnormal psychology (ex. psychology of adjustment, mental hygiene, psychology of the emotionally disturbed) 3 semester hours

2. Basic Professional Courses: Minimum of 12 semester hours to include the following:

- *a. American phonetics 3 semester hours
- *b. Anatomy and physiology of the speech and hearing mechanism 3 semester hours
- *c. Normal speech and language acquisition (to include cultural and regional variations) 3 semester hours
- d. Voice science and/or acoustics 3 semester hours
- *e. Methods and materials in speech, language, and hearing therapy in public schools (cross listed under Professional Education, Section 4.c., above) 3 semester hours

3. Hearing and Hearing Disorders: Minimum of nine semester hours to include the following:

- *a. General foundations in audiology (including hearing testing) 3 semester hours
- b. Advanced hearing testing 3 semester hours
- *c. Aural rehabilitation 3 semester hours

4. Speech and Language Disorders: Minimum of 30 semester hours (no more than six of which may be counted in clinical practicum credits) to include the following:

- *a. Survey of or introduction to communicative disorders 3 semester hours
- *b. Articulation disorders 3 semester hours
- *c. Language disorders 3 semester hours
- *d. Disorders of rhythm (to include stuttering) 3 semester hours
- *e. Voice disorders 3 semester hours
- f. Cleft palate, orofacial disorders 3 semester hours

- g. Neurological disorders (cerebral and peripheral neurological disorders) 3 semester hours
- h. Aphasia 3 semester hours
- i. Diagnosis and diagnostic practicum with speech and language disorders 3 semester hours

*Indicates those courses recommended to be taught at the bachelor's level.

A minimum of 30 semester hours must be earned at the graduate level excluding six semester hours of practicums.

5. A minimum of 375 clock hours of supervised clinical practicum is required, of which at least 100 clock hours must have been earned at the undergraduate level. These hours must include experiences with individuals from birth to 21 years of age and shall include at a minimum the following distribution of hours or the distribution of hours as specified for clinical practicum by the American Speech-Language-Hearing Association (ASHA):

A minimum of 50 hours in diagnosis,

A minimum of 50 hours in hearing, testing, and auditory rehabilitation,

A minimum of 75 hours in language disorders,

A minimum of 30 hours in articulation disorders,

A minimum of 30 hours in rhythm disorders.

Ancillary Certificates for Speech Therapists

An ancillary certificate authorizing service only as a speech therapist, not as a classroom teacher, may be issued based upon one of the following criteria:

1. verification that the applicant holds the ASHA Certificate of Clinical Competence,
2. verification from ASHA that the requirements for the Certificate of Clinical Competence have been met (with the possible exception of the clinical fellowship year),
3. verification from the director of an ASHA certified training program, in which the applicant has completed a master's degree, that ASHA requirements for the Certificate of Clinical Competence have been met (with the possible exception of the clinical fellowship year).

For those persons who have not completed the clinical fellowship year, this designation will be so noted on the certificate.

Types of Certificates for Speech/language Pathology Assistants-level 1

Type C. A Type C certificate for Speech/Language Pathology Assistant-Level 1, valid for three years and renewable, may be issued to an individual who earns a baccalaureate degree from a regionally accredited institution, including completion of the undergraduate portion of an educational training program, approved by the State Board of Elementary and Secondary Education, in disorders of communication (speech, language, and hearing disorders) with credits distributed as provided for speech, language, and hearing specialists, including general, professional, and specialized academic education.

Level 1 designates the requirement of direct supervision by a certified and licensed speech/language pathologist. When a master's degree is earned in disorders of communication (speech, language, and hearing disorders and severe language disorders), the Level 1 designation requiring direct supervision shall be removed upon request.

Ancillary Certificate. An ancillary certificate for Speech/Language Pathology Assistant-Level 1, valid for three years and renewable, may be issued to an individual who has earned a baccalaureate degree in speech/language pathology from a regionally accredited institution and has completed at least 100 clock hours of supervised clinical practicum.

Level 1 designates the requirement of direct supervision by a certified and licensed speech/language pathologist.

Ancillary Speech/Language Pathology Assistant-Level 1 certificates authorize service as a speech pathology assistant only, not as a regular classroom teacher.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 22:

Interested persons may submit comments on the proposed revisions until 4:30 p.m., August 9, 1996 to: Jeannie Stokes, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

certified providers of speech/language pathology services available for employment in school systems.

Marlyn Langley
Deputy Superintendent
Management & Finance
9606#057

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Vocational-Technical Personnel

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, revised Bulletin 746, Part B, Louisiana Standards for State Certification of School Personnel, Vocational-Technical Personnel, Postsecondary. Requirements for the certification of vocational-technical personnel, including personnel in regional centers, vocational-technical directors, assistant directors, and instructors are described, as are application procedures and due process rights for those not meeting the published requirements. The major changes in this document are:

1. New certification requirements for:
 - a. full-time degree granting programs;
 - b. automotive technology, diesel mechanics, and collision repair technology;
 - c. associate degree general education.
2. Types of Certificates
 - a. Type T;
 - b. Type P;
 - c. Type S.
3. Course Requirements
 - a. Instructors with a high school diploma/GED must complete 15 hours of VTIE courses plus the new instructor workshop and must complete A.D. requirements within six years if teaching a degree granting program.
 - b. Instructors with an associate degree must complete nine hours of VTIE courses plus the new instructor workshop.
 - c. Instructors with a B.S. noneducation degree must complete six hours of VTIE courses plus the new instructor workshop.
 - d. Instructors with a master noneducation degree must complete six hours plus the new instructor workshop.
 - e. Instructors with a B.S. in education must complete an orientation program only.
 - f. Instructors with a master's in education must complete an orientation program only.
 - g. Six hours of core course requirements have been eliminated. Instructors may choose from nine approved courses for required hours.
4. Orientation Program
 - a. The following personnel are required to complete the Louisiana Technical College System orientation program approved by the Louisiana Technical College System: all unclassified personnel who are new to the technical college

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Certification Requirements for Speech, Language, and Hearing Specialists and Provisions for Certification of Speech/Language Pathology Assistant-Level 1

- 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 proposed rule reduces the number of undergraduate level clinical practicum clock hours required for certification as a speech, language, and hearing specialist. In addition, the proposed rule will authorize certification for persons who hold a baccalaureate degree in speech/language pathology to provide service as a speech/language pathology assistant under direct supervision in local school systems.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will result in an increase in the number of

system except personnel who are required to take the new instructor workshop.

5. **Work Experience.** All work experience requirements have been changed to four years.

6. Changed certification requirements for:
- financial aid officer;
 - curriculum specialist;
 - industrial coordinator;
 - recruitments and placement officer;
 - computer specialist.

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

Interested persons may submit comments on the proposed revisions to Bulletin 746 until 4:30 p.m., August 9, 1996 to: Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

The complete document may be viewed at the Office of the State Register, Room 512 of the Capitol Annex and at the Office of the Technical College System in the Department of Education, or the office of the Board of Elementary and Secondary Education located in the Department of Education Building in Baton Rouge, LA. A copy of the full text can be obtained from the Office of the State Register at a cost of \$23. Please reference document number 9606#056.

Carole Wallin
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Vocational-Technical Personnel

- ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$150. Funds are available.
There will be a \$500 cost for printing and distributing copies of the new bulletin. This cost will be incurred by the Louisiana Technical Resource Center. Funds are available.
- ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**
There will be no effect on revenue collections of state or local governmental units.
- ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**
There will be no effect on costs and/or economic benefits to directly affected persons or nongovernmental groups.
- ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**
There will be no effect on competition or employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
9606#056

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1191—School Transportation Handbook

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, Revised Bulletin 1191, School Transportation Handbook.

Bulletin 1191 is referenced in the Administrative Code, Title 28 as noted below. Complete text of the revised bulletin may be viewed at the Department of Education, Bureau of Migrant Education/School Transportation, at the office of the Board of Elementary and Secondary Education located in the Education Building in Baton Rouge, LA, or at the Office of the State Register, located on the Fifth Floor of the Capitol Annex. The full text can be obtained at a cost of \$16.25 by contacting the Office of the State Register. Please reference document number 9606#053.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §915. Bus Transportation Standards and Regulations

A. Bulletin 1191, School Transportation Handbook, is adopted as revised, 1996. This bulletin sets forth policies, rules and regulations for providing pupil transportation services to regular and special education students. Staff and parental responsibilities at the local level are delineated. Eligibility requirements, instructional programs, and removal procedure for bus drivers are established. Regulations are included for the operation of vehicles (for example, loading and unloading of buses, and speed limits) and for the maintenance and inspections of vehicles. Procedures are given for the determination of bus routes and for claiming state reimbursements. Student eligibility requirements and instructions for those riding the buses are given. Evaluation procedures are established. Definition of terms and summaries of relevant state laws are included as parts of the bulletin.

* * *

AUTHORITY NOTE: R.S. 17:158; R.S. 160-161; R.S. 17:164-166.

Interested persons may submit written comments on the proposed revisions until 4:30 p.m., August 9, 1996 to: Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1191—School Transportation
Handbook**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated implementation cost to print 166 copies of the revised 1996 School Transportation Handbook, Bulletin 1191 is \$640.
BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$100. Funds are available.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There would be no effect on revenue collections after giving two copies to each school system.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There would be no estimated cost and/or economic benefit, in that individual copies will be given to all consumers without cost.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There would be no estimated effect on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
9606#053

Richard England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Bylaws

The Louisiana Student Financial Assistance Commission (LASFAC), the statutory body created by R.S. 17:3021, et seq., in compliance with §952 of the Administrative Procedure Act, advertises its intention to adopt bylaws to govern the commission, its meetings, officers and executive staff, order of business, committees, communications to the commission, rights, duties and responsibilities of the executive staff, responsibilities of commission members, amendment or repeal of bylaws, rules and regulations.

Part I. Bylaws of the Louisiana Student Financial Assistance Commission

Article I. Definitions and Authority

Chairman of the Commission (as used in these bylaws)—the executive secretary to the governor or his/her designee, who shall serve as ex officio chairman of the commission.

Director (as used in these bylaws)—that person appointed in the classified service as the administrative head of a division of the Office of Student Financial Assistance.

Divisions (as used in these bylaws)—a subordinate organizational element of the Office of Student Financial Assistance which has been approved by the commission.

Executive Director (as used in these bylaws)— that person

duly appointed by the commission pursuant to R.S. 17:3022(B) to serve in the unclassified service as executive director of the Office of Student Financial Assistance, who shall be its chief executive officer and the appointing authority for all classified employees of the office.

Fiscal Officer (as used in these bylaws)—that employee of the office assigned responsibility for preparation and monitoring the approved budget of the commission, who may jointly serve as a director.

Louisiana Student Financial Assistance Commission (as used in these bylaws)—the statutory body created by R.S. 17:3021, et seq., which shall be composed of the members who are duly appointed and qualified as provided by law. The commission shall be the governing body of the Office of Student Financial Assistance and shall establish procedures for the selection and appointment of the unclassified employees of that office, in conformance with applicable laws.

Office of Student Financial Assistance (as used in these bylaws)—the organization created by R.S. 36:650 to perform the functions of the state relating to the programs of financial assistance and the certain scholarship programs for higher education in accordance with the directives of the commission and applicable law.

Article II. Meetings

Section 1. Regular Meetings. The commission shall hold regular meetings which are limited in number to 12 per year. All regular meetings shall be held at meeting places designated by the commission. Proxy voting shall be allowed at all meetings for the chairman of: State Board of Elementary and Secondary Education; Board of Supervisors, Louisiana State University; Board of Supervisors, Southern University; Board of Regents; Board of Trustees and Louisiana Association of Independent Colleges and Universities, or each of their designees; however, any proxy holder must also be a member of that respective board. The superintendent of education may vote by proxy through a member of his/her executive staff. No other members shall have the right of proxy voting.

Section 2. Special Meetings. Special meetings of the commission may be called by the chairman at any time, or by the secretary upon written request therefor signed by a majority of the members and specifying the purposes of the desired meeting. Written notification shall be sent to each member at least three calendar days before the time of the meeting.

Section 3. Compensation. Members of the commission shall receive compensation for their service at the rate authorized by statute or as authorized by executive order, and shall be reimbursed for their necessary travel expenses actually incurred in the conduct of the business of the commission.

The commission is limited to 12 meetings per year for which per diem may be drawn by commission members.

Section 4. Quorum. A simple majority of the commissioners shall constitute a quorum for the transaction of any business, and a simple majority of the quorum present at any meeting voting in favor or against a particular item shall be the act of the commission.

Article III. Officers of the Commission and Executive Staff

Section 1. Chairman and Vice Chairman. The executive secretary to the governor or his/her designee shall serve as ex officio chairman of the commission. The commission shall select a vice chairman annually. Should a vacancy occur in the vice chairmanship, the commission shall elect a successor from its membership. The commission may elect such other officers as it deems necessary.

The chairman of the commission shall preside over all meetings of the commission, serve as ex officio member of all committees, name the appointive members of all standing and special committees of the commission, and fill all vacancies in the membership of such committees, in accordance with the provisions of these bylaws.

The vice chairman of the commission shall perform the duties of the chairman in the absence of the chairman of the commission.

In the event both the chairman and the vice chairman are absent from a commission meeting, the commission shall elect a temporary chairman from those present.

Section 2. Secretary. The commission shall elect a secretary annually, who may certify the minutes, papers and documents of the commission or of its committees to be true and correct copies.

Section 3. Executive Staff. The executive staff of the commission shall include the incumbent of those positions within the Office of Student Financial Assistance so designated by the executive director and will normally be composed of the executive director, the staff attorney, the fiscal officer and the directors of the divisions of the office, and such other personnel as may be required for the efficient performance of the functions of the commission. The executive staff shall be tasked, directed and supervised by the executive director.

Section 4. Authentication. Copies of all minutes, papers and documents of the commission, or its committees, may be certified to be true and correct copies by either the chairman, secretary or executive director.

Article IV. Order of Business

Section 1. Rules of Order. When not in conflict with any of the provisions of this article, *Robert's Rules of Order* (latest revision) shall constitute the rules of parliamentary procedure applicable to all meetings of the commission or its committees.

Section 2. Order of Business. The order of business of regular meetings of the commission shall be as follows:

- a. roll call;
- b. corrections and approval of minutes of preceding regular meetings and of all special meetings held subsequent thereto;
- c. reports and recommendations of standing and special committees;
- d. unfinished business;
- e. divisional updates;
- f. new business;
- g. next meeting.

Section 3. Reference to Committees. In cases where feasible and desirable before taking action, the commission should refer any subject or measure to the standing or special

committee in whose purview the matter falls. The committee to which the matter is referred should submit to the commission its recommendations in writing, together with any resolutions necessary to facilitate such recommendations.

Section 4. Meetings. Meetings shall be conducted in accordance with state law governing public bodies. It shall be the policy of the commission that all meetings be open to all who wish to attend. The commission shall enter into a closed or executive session by two-thirds majority vote of the quorum present. Prior to each regular meeting of the commission, the executive director, with approval of the chairman, shall prepare and forward to each member of the commission a tentative agenda for the meeting at least five working days prior to such regular meeting. Upon request of three members of the commission made prior to the fifth day before the next commission meeting that a particular item be included, the chairman shall place the subject or subjects upon the agenda. All matters requiring commission action, however, may be acted on even though not carried on the agenda.

Each resolution shall be reduced to writing and presented to the commission before it is acted upon. All official actions of the commission shall require a simple majority vote of the quorum present at the meeting.

Section 5. Minutes. The minutes of the commission shall record official action taken upon motions or resolutions which are voted upon by the commission and may contain a summary of reports and pertinent discussion. The foregoing provisions relative to contents of the minutes shall, in general, also apply to minutes of committees of the commission. The minutes of meetings of the commission become official only when completed and approved by the commission.

Section 6. Meeting Attendance. Commission members are required to attend all commission meetings. Failure to attend three meetings annually will result in a notice being sent from the commission to the absent member stating that failure to attend one more meeting will result in a request being made to the appointing authority that the absent member be replaced. In the event a fourth meeting is missed, said request shall be sent to the appointing authority. Also, the absent member shall be relieved of duties on any committee to which he/she has been appointed to serve. This section is not applicable to meetings that are missed with just cause, as determined by the chairman.

Article V. Committees

Section 1. Standing Committees. Unless and until otherwise decided by the vote of a simple majority of the membership of the commission, the standing committees of the commission shall consist of the following:

- a. Executive Committee;
- b. Budget and Finance Committee;
- c. Personnel and Policy Committee.

Section 2. Appointment and Terms. Members of all standing committees, one of whom shall be designated as chairman and one of whom shall be designated as vice chairman, shall be appointed by the chairman of the commission, ordinarily soon after the chairman assumes office. The term of committee appointments shall be one year.

Vacancies occurring among the appointive members of any committees, however arising, shall be filled by the chairman of the commission for the remainder of the unexpired term.

Section 3. Officers of Standing Committees. The chairman and the vice chairman of the commission shall be chairman and vice chairman, respectively, of the executive committee. In the absence of the chairman, the vice chairman shall preside. In the event both the chairman and vice chairman are absent from a meeting, the committee shall elect a temporary chairman from those present.

It shall be the duty of the chairman of each committee to call and to preside over the necessary meetings. The minutes of the meeting of the committee, showing its actions and recommendations, shall be deemed in compliance with the provisions of Article IV, Section 3, hereof, concerning the written recommendations of the committee.

Section 4. Quorum of Committee Meetings. A simple majority of the membership present at a meeting of a committee of the commission shall constitute a quorum for the transaction of business. When a quorum is not present, the chairman of the committee, or vice chairman in the chairman's absence, may designate a member of the commission to serve as a substitute member of the committee concerned.

Section 5. Authority of Committees. The authority of committees of the commission shall be subject to these bylaws and to the policies and direction of the commission.

Section 6. Executive Committee. The executive committee shall consist of five members. The chairman and vice chairman of the commission shall serve in those capacities on the executive committee. The chairman of each of the other standing committees or the chair's designee from his respective committee shall be a member of the executive committee. The remaining person, for a total of five members, shall be appointed by the chairman of the commission from the other members of the commission.

The executive committee shall consider such matters as shall be referred to it by the commission and shall execute such orders and resolutions as shall be assigned to it at any meeting of the commission. All official actions of the executive committee shall require a majority vote of the quorum present at the meeting. The executive committee shall also approve all budget adjustments prior to submission to the appropriate authority. In the event that an emergency requiring immediate commission action shall arise between commission meetings, it shall be the duty of the executive committee to meet in emergency session to take such action as may be necessary and appropriate. The executive committee shall report the actions it takes in emergency session to the commission for ratification at the commission's next meeting.

Section 7. Budget and Finance Committee. The Budget and Finance Committee shall consist of not less than six members of the commission. Normally, to this committee shall be referred all matters related to budget and to policies concerning the financial management of the commission and the office.

Section 8. Personnel and Policy Committee. The Personnel and Policy Committee shall consist of not less than six members of the commission. Normally, to this committee

shall be referred matters concerning reorganization of the office. This committee shall hear appeals pursuant to the office's grievance procedure.

Section 9. Special Committees. As the necessity therefor arises, the chairman may, with the concurrence of the commission, create special committees with such functions, powers and authority as may be delegated. The chairman may appoint ad hoc committees for special assignments for limited periods of existence not to exceed the completion of the assigned task.

Article VI. Communications to the Commission

Section 1. All communications to the commission, or to any committee thereof, from persons having official relations with the commission shall be filed in writing with the executive director and duly transmitted by him to the commission. The executive director shall have the authority to read and comment upon all communications from employees of the office but shall not delay or withhold such communications, except as hereinafter provided. Such communications shall be filed with the executive director at least five days before the meeting of the commission or committee and with the chairman at least three days before such meeting. Otherwise, the executive director may either submit such communication at that time or withhold such communication until the next meeting. In the event the executive director elects to withhold any such communication until the next meeting, such communication shall be promptly forwarded to the chairman with the notation of the executive director concerning such withholding.

Article VII. Rights Duties and Responsibilities of the Executive Staff of the Commission

Section 1. Executive Staff of the Commission. The executive staff of the commission staff shall include the incumbent of those positions within the Office of Student Financial Assistance so designated by the executive director and will normally be composed of the executive director, the staff attorney, the fiscal officer and the directors of the divisions of the office, and such other personnel as may be required for the efficient performance of the functions of the commission. The executive staff shall be tasked, directed and supervised by the executive director.

Unless otherwise directed by the executive director, the executive staff shall attend the meetings of the commission and its various committees.

Section 2. Executive Director

a. The executive director shall be the executive head and chief administrative officer of the Office of Student Financial Assistance. The executive director will be responsible to the commission for the conduct of the Office of Student Financial Assistance in all affairs and shall execute and enforce all of the decisions, orders, rules and regulations of the commission with respect to the conduct of the Office of Student Financial Assistance. The executive director shall be appointed by and shall hold office at the pleasure of the commission. The executive director's discretionary authority shall be broad enough to enable him/her to meet his/her responsibilities, in the day-to-day operations of the Office of Student Financial Assistance.

b. The executive director shall be the "appointing authority" for the purposes defined by state civil service law,

rules and regulations and shall exercise the authority granted to an "appointing authority" thereunder.

c. Subject to these bylaws and the regulations and directions of the commission, the executive director shall:

1. establish administrative policies and procedures for the operation of the Office of Student Financial Assistance;

2. plan, organize, supervise, direct, administer, and execute the functions and activities of the Office of Student Financial Assistance;

3. prepare and present a business plan and consolidated budget for the Office of Student Financial Assistance and the commission;

4. serve as governmental liaison and spokesperson for the commission;

5. promote the development of the commission's programs.

d. The executive director shall task, direct, and supervise the executive staff.

e. The executive director shall be responsible for ensuring compliance with the legislatively enacted budgets as approved by the commission.

Section 3. Directors of Divisions

a. There shall be a director for each division of the Office of Student Financial Assistance, appointed by the executive director in accordance with state civil service laws, rules and regulations. Under the direction and authority of the executive director and the rules of the commission, each director shall administer the division for which he/she is appointed.

b. As the administrative head of a division, the director shall be responsible to the executive director for planning, supervising, directing, administering and executing the functions and programs assigned to the division in accordance with all applicable laws, rules, regulations, policies, directives, and budgets.

c. The directors may invite members of his/her administrative staff to aid him in his/her presentations to the commission.

Section 4. Delegation of Authority

In the absence of the executive director, the director of the loan division, as delegated by the executive director during his/her absences, will assume the duties of the executive director. In the event both the executive director and the director of the loan division are absent, the executive director will appoint another division director to assume the duties of the executive director.

Section 5. Agency Fiscal Officer (Manager)

The fiscal officer is responsible for assisting the directors in developing annual operating budgets based upon the commission's approved business plan. This shall include the functions of review and recommendations concerning the budget of each division and the preparation of a consolidated budget, as well as monitoring and reporting the budget as approved by the commission and enacted by the state legislature.

Article VIII. Responsibilities of Commission Members

Commission members are charged with the responsibility of ensuring that the functions and duties of the Office of Student Financial Assistance are performed effectively in fulfilling the

purposes of R.S. 17:3021 et seq. Prior to assuming the responsibilities to which appointed and to avoid any potential conflict of interest, a commissioner shall, to the best of his or her knowledge, disclose to the State Board of Ethics any pre-existing relationship between the commission and the commissioner or any member of the commissioner's immediate family or any entity in which the commissioner has a substantial economic interest. This obligation to disclose is a continuing obligation.

Article IX. Amendment or Repeal of Bylaws

New bylaws may be adopted, and bylaws may be amended or repealed, at any meeting of the commission, but no such action shall be taken unless notice of such proposed adoption, amendment, or repeal shall have been given at a previous meeting or notice in writing of the proposed change shall have been served upon each member of the commission at least 30 days in advance of the final vote upon such change, provided, however, when deemed necessary, that by a simple majority of the entire membership of the commission, the requirements for such notice may be waived at any time.

Article X. Rules and Regulations of Louisiana Student Financial Assistance Commission

Section 1. Any action by the commission establishing policy or methods of procedure, administrative, business, or otherwise shall be known as "Rules and Regulations of the Louisiana Student Financial Assistance Commission."

Section 2. "Rules and Regulations of the Louisiana Student Financial Assistance Commission" may be adopted by the commission, or may be amended or repealed, in whole or in part, at any meeting of the commission by a vote of simple majority.

Section 3. All policies and procedures of the commission falling within the definition of rules and regulations, as herein defined, and in existence upon the date of the adoption of these bylaws, shall be a part of the "Rules and Regulations of the Louisiana Student Financial Assistance Commission."

Article XI.

These bylaws shall be adopted and shall become effective on the date they are published as final rule in the *Louisiana Register*.

Article XII. Repealing Clause

All rules, orders, regulations, and resolutions heretofore enacted or adopted by this commission, which are in conflict with these bylaws, are hereby repealed.

Interested persons may submit written comments on the bylaws until 4:30 p.m., August 20, 1996, at the following address: Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bylaws

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No implementation costs are anticipated to result from this action.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections will result from this action.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Publication of the bylaws will make affected persons and nongovernmental groups aware of their existence.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated to result from this action.

Jack L. Guinn
Executive Director
9606# 051

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Board of Nursing

Registration and Licensure Fees (LAC 46:XLVII.3361)

Notice is hereby given that the Board of Nursing (board), pursuant to the authority vested in the board by R.S. 37:918(12), Act 95 of the 1966 Special Legislative Session, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., proposes to amend its rules and regulations, LAC 46:XLVII.3361.

The text of these proposed rules may be view in its entirety in the Emergency Rule Section of this issue of the *Louisiana Register*.

A public hearing will be held on July 25, 1996 at 8:30 a.m. in the conference room of the board, 3510 North Causeway Boulevard, Suite 501, Metairie, LA 70002. Interested persons are invited to attend and submit oral comments on the proposed rules.

All interested persons are invited to submit written comments on the proposed rules no later than the close of business at 4:30 p.m. on July 18, 1996. Comments should be submitted to Barbara L. Morvant, Executive Director, Board of Nursing, 3510 North Causeway Boulevard, Suite 501, Metairie, LA 70002.

Barbara L. Morvant, M.N., R.N.
Executive Director

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

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that one additional R.N. staff member and one additional secretary will be needed to implement this program. Additional operating expenditures for printing, equipment and computer software programming will be incurred. The projected costs are \$55,809.99 for FY 95-96 (beginning January 1, 1996 through June 30, 1996); \$117,356 for FY 96-97; and \$112,579.08 for FY 97-98. some of the

- projected costs for FY 95-96 have already been incurred.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Revenue projections are based on initial application of 1500 Advanced Practice Registered Nurses. The number of initial applicants is based on the number of currently recognized advanced practitioners of nursing and the number of advanced practitioners of nursing who have allowed their R.N. licensure to lapse or become inactive. A decrease in revenue is anticipated in FY 96-97 and FY 97-98 due to individuals who will retain their R.N. licensure but will practice in another area and will not request licensure as an Advanced Practice Registered Nurse. Revenue projections are \$112,500 for FY 95-96; \$84,750 for FY 96-97; and \$95,310 for FY 97-98. Revenues for FY 95-96 have already been received under authority of previous emergency rules published in the December, 1995 *Louisiana Register*.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Individuals currently recognized as advanced practitioners of nursing will be required to apply for initial licensure as an Advanced Practice Registered Nurse. Applicants will be required to pay a \$75 application fee and will be subject to a \$45 annual renewal fee.
New applicants will be required to meet the educational and certification requirements as accepted by the State Board of Nursing. Individuals seeking to meet the educational requirements after January 1, 1996 must obtain graduate education. Costs will vary greatly depending on the educational program selected and the specific certifying agency.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The impact on competition and employment is unknown at this time.

Barbara L. Morvant, M.N., R.N.
Executive Director
9606#050

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Community Based and Rural Health Services (LAC 48:I.15101, 15103 and LAC 48:V.13301, 13303)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Public Health does hereby propose to adopt a rule establishing two distinctly separate processes for the criteria, application, consideration, selection, and awarding of a grant for an urban community-based health care program and a rural health care program. The two aforementioned distinct processes were mandated by Act 363 of the 1995 Louisiana Legislative Session. As mandated by Act 363 of 1995, the emergency rule also establishes separate periodic review and reporting requirements.

This proposed rule is scheduled to become effective September 20, 1996.

Title 48
PUBLIC HEALTH—GENERAL
Part I. General Administration
Subpart 9. Primary Health Services

Chapter 151. Grants

§15101. Funding and Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2194-2198.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 18:54 (January 1992), repealed by the Office of Public Health, LR 22:

§15103. Funding and Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2194-2198.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, LR 18:182 (February 1992), repealed by the Office of Public Health, LR 22:

Part V. Preventative Health Services
Subpart 49. Community Based and Rural Health Services

Chapter 133. Funding Eligibility (formerly Chapter 151 of Part I)

§13301. Rural Health Program (formerly §15101)

A. Contingent upon available funding, the Health Resources Management Section may establish one or more application cycles in any state fiscal year. At the beginning of any application cycle, eligible entities will be notified that applications are being accepted for grant projects.

B. Criteria for Applicants

1. Applicants for primary care clinic grants, demonstration grants, state matching funds for federal grants, and physician salary subsidy must:

a. be from rural areas as defined by the Department of Health and Hospitals, must be in a federally designated rural health-professional shortage area or medically underserved area of highest need;

b. be a local governmental entity or a nonprofit (501)(c)(3) organization domiciled in Louisiana;

c. serve low-income and indigent persons; and

d. have a sliding scale for payment of services.

2. Applicants for emergency health services grants must:

a. be small rural hospitals, defined as public and private acute care hospitals licensed for 60 beds or less which have a service municipality with a population of 20,000 people or less;

b. be in a federally designated rural health-professional shortage area or medically underserved area of highest need; and

c. serve low-income and indigent persons.

C. The HRM Section will provide forms and/or guidelines for application to apply for program funds. The application shall be received by the deadline date and signed by the authorized representative and submitted to the HRM Section.

D. The HRM Section shall conduct a review of the application for eligibility, completeness and programmatic priority.

E. All applications and/or requests for funding will be

referred to the Objective Review Committee for award recommendations. The committee will consider the project and may confer with outside parties as necessary to obtain information on the financial feasibility, and readiness to proceed and make written recommendations to the Health Resources Management Section.

F. Recommendations will be forwarded to the assistant secretary, OPH for approval. The assistant secretary will act on the application after a time period of proper consideration, but no later than 45 days after the application has been received by the assistant secretary.

G. The HRM Section will notify the applicant of the approval or disapproval of its application within 10 working days of the assistant secretary's action. Written notification of the approval will be accompanied by an agreement to be signed by an authorized representative of the applicant and returned by certified mail.

H. All communications regarding an eligible entity's application shall be directed to the HRM Section.

I. Grant Type Categories:

1. Emergency Health Services

a. Small rural hospitals, defined herein, can apply for grants up to \$75,000 to strengthen their capability to provide high quality emergency health services to indigent and low income persons in rural areas.

b. A letter of intent must be submitted and shall reflect how the funds requested will be utilized.

2. Primary Care Clinic Grants

a. A request for an application kit to establish or enhance a primary care clinic in a rural area may be obtained from the Health Resources Management Section.

b. The proposal must include a needs assessment, a management plan, a detailed budget and budget justification, and other information as defined in the application kit.

c. The proposal including any appendices, may not exceed 50 typed, double-spaced, letter size pages.

d. Grant requests may not exceed \$150,000.

3. Demonstration Grants

a. Applicants must be located in a rural medically underserved area and may apply for a grant to fund a project designed to innovatively, efficiently, and effectively develop and provide out-patient primary care services.

b. Demonstration projects can include, but are not limited to the establishment or acquisition of mobile health clinics, healthy communities projects, school-based clinic projects or others that will then secure other local or federal funding.

c. The grantee will be required to provide a 25 percent match (cash and/or in-kind) from the community or participating organization.

d. The proposal must include a needs assessment, a management plan, a detailed budget and budget justification, and other information as defined in the application kit.

e. Application kits can be obtained from the Health Resources Management Section.

4. Physician Salary Subsidy

a. Local health agencies or communities may apply for state matching funds for physician salary guarantees of \$100,000 annually in salary and benefits to assist in recruiting

and/or retain full time primary care physicians in the rural areas.

b. Primary care shall include pediatrics, OB/GYN, internal medicine, family practice, or general practice.

c. Subspecialty training is permitted provided the physician practices only primary care as specified.

d. A *full time primary care physician* is defined as a physician who practices out-patient preventive and primary care medicine at least 32 hours per week in not less than four days.

e. Local health agencies or communities are eligible for more than one award.

f. Only one award per physician is allowable under this program.

g. Eligible physicians must be newly hired or recently employed, as specified above, within the last five years.

h. State salary subsidies will not exceed \$50,000, and the local community must demonstrate its ability to at least match the state amount.

i. The Health Resources Management Section will contract directly with the local health agencies or communities who, in turn, contract with the primary care physician in the rural area. As such, agencies/communities must submit with their request for assistance, a copy of a contract with a physician which shall address the \$100,000 guarantee.

j. The Department of Health and Hospitals will make no payments under this incentive until the physician's actual received income and benefits are reconciled against his/her contract.

5. State Matching Funds for Federal Grants

a. Requests for one time funding only will be accepted for new projects to provide primary care out-patient services to indigent or low income persons as proposed in federal grant applications.

b. Eligible applicants must provide a copy of the federal announcement and completed federal application at the time of request for funding.

J. Eligibility. In order to be eligible to receive a grant through this program, in addition to meeting the criteria set forth in Subsection B, the following requirements must be met by an eligible entity:

1. An eligible entity shall be a community-based organization that may include hospitals, primary care clinics, or other local agencies that provides outpatient primary care in a rural area.

2. An eligible entity shall have a governing board whose membership is generally representative of the health care underserved area served.

3. An eligible entity which is a primary care clinic shall sustain or provide a minimum level of primary care services through the services of a physician or midlevel practitioner as provided for by Louisiana medical practice law.

a. Services may additionally include, but not be limited to, medical support, diagnostic and treatment services, pharmacy, laboratory, radiology, preventive health services, emergency medical services, mental health, patient follow-up, and/or dental and dental support services.

b. Such services shall be provided in coordination with primary medical care services.

4. An eligible entity shall have policies and procedures which assure that no person will be denied services because of inability to pay.

5. An eligible entity shall comply with all applicable federal, state, and local laws and regulations.

6. An eligible entity shall ensure the grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service:

a. under:

i. any state compensation program;

ii. an insurance policy; or

iii. any federal state health benefits programs; or

b. by an entity that provides health services on a prepaid basis.

7. Other requirements as determined by the department.

K. Review and Reporting Requirements

1. The successful applicant shall sign a Memorandum of Agreement for one-time funding only for the term of one year.

2. The grantee shall then submit programmatic and expenditure reports on a periodic basis as agreed upon in the MOA.

3. An audit report shall be submitted after the end of the contract period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2195, as amended by Act 363 of 1995.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 22:

§13303. Urban Community-Based Health Program (formerly §15103)

A. Contingent upon available funding, the Health Resources Management Section may establish one or more application cycles in any state fiscal year. At the beginning of any application cycle eligible entities will be notified that applications are being accepted for grant projects.

B. Applications will only be accepted from entities in a federally designated urban health-professional shortage area or medically underserved area, must:

1. be in an area of highest need;

2. serve low income and indigent persons;

3. have a sliding scale for payment; and

4. be a local governmental entity or a nonprofit (501)(c)(3) organization domiciled in Louisiana.

C. The HRM Section will provide forms and/or guidelines for application to apply for program funds. The application shall be received by the deadline date and signed by the authorized representative and submitted to the HRM Section.

D. The HRM Section shall conduct a review of the application for eligibility, completeness and programmatic priority.

E. All applications and/or requests for funding will be referred to the Objective Review Committee for award recommendations. The committee will consider the project and may confer with outside parties as necessary to obtain information on the financial feasibility, and readiness to proceed and make written recommendations to the Health Resources Management Section.

F. Recommendations will be forwarded to the assistant secretary, OPH for approval. The assistant secretary will act on the application after a time period of proper consideration, but no later than 45 days after the application has been received by the assistant secretary.

G. The HRM Section will notify the applicant of the approval or disapproval of its application within 10 working days of the assistant secretary's action. Written notification of the approval will be accompanied by an agreement to be signed by an authorized representative of the applicant and returned by certified mail.

H. All communications regarding an eligible entity's application shall be directed to the HRM Section.

I. Grant Type Categories

1. Primary Care Clinic Grants

a. A request for an application kit to establish or enhance a primary care clinic in an urban area may be obtained from the Health Resources Management Section.

b. The proposal must include a needs assessment, a management plan, a detailed budget and budget justification and other information as defined in the application kit.

c. The proposal, including any appendices, may not exceed 50 typed, double-spaced, letter size pages. Grant requests may not exceed \$150,000.

2. Demonstration Grants

a. Applicants must be located in an urban health-professional shortage area or medically underserved area and may apply for a grant to fund a project designed to innovatively, efficiently, and effectively develop and provide outpatient primary care services.

b. Demonstration projects can include, but are not limited to the establishment or acquisition of mobile health clinics, healthy communities projects, school-based clinic projects or others that will then secure other local or federal funding.

c. The grantee will be required to provide a 25 percent match (cash and/or in-kind) from the community or participating organization.

d. Application kits can be obtained from the Health Resources Management Section.

3. Physician Salary Subsidy

a. Local health agencies or communities may apply for state matching funds for physician salary guarantees of \$100,000 annually in salary and benefits to assist in recruiting and/or retaining full time primary care physicians in the inner-city urban areas.

b. Primary care shall include pediatrics, OB/GYN, internal medicine, family practice, or general practice.

c. Subspecialty training is permitted provided the physician practice only primary care as specified.

d. A *full time primary care physician* is defined as a physician who practices outpatient preventive and primary care medicine at least 32 hours per week in not less than four days.

e. Local health agencies or communities are eligible for more than one award.

f. Only one award per physician is allowable under his program.

g. Eligible physicians must be newly hired or recently

employed, as specified above, within the last five years.

h. State salary subsidies will not exceed \$50,000, and the local community must demonstrate its ability to at least match the state amount.

i. The Health Resources Management Section will contract directly with the local health agencies or communities, who in turn contract with the primary care physician in the urban area. As such, agencies/communities must submit with their request for assistance, a copy of a contract with a physician which shall address the \$100,000 guarantee.

j. The Department of Health and Hospitals will make no payments under this incentive until the physician's actual received income and benefits are reconciled against his/her contract.

4. State Matching Funds for Federal Grants

a. Request for one time funding only will be accepted for new projects to provide primary care outpatient services to indigent or low income persons as proposed in federal grant applications.

b. Eligible applicants must provide federal announcement and completed federal application at the time of request for funding.

J. Eligibility. In order to be eligible to receive a grant through this program, the following requirements must be met by an eligible entity:

1. An eligible entity shall be a community-based nonprofit organization, hospital, primary care clinic, or organization that provides outpatient primary care in an urban health-professional shortage area.

2. An eligible entity shall have a governing board whose membership is generally representative of the health-care underserved area served.

3. An eligible entity which is a primary care clinic shall sustain or provide a minimum level of primary care services through the services of a physician or midlevel practitioner as provided for by Louisiana medical practice law.

a. Services may additionally include, but not be limited to, medical support, diagnostic and treatment services, pharmacy, laboratory, radiology, preventive health services, emergency medical services, mental health, patient follow-up, and/or dental and dental support services.

b. Such services shall be provided in coordination with primary medical care services.

4. An eligible entity shall have policies and procedures which assure that no person will be denied services because of inability to pay.

5. An eligible entity shall comply with all applicable federal, state, and local laws and regulations.

6. An eligible entity shall ensure the requested funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service:

a. under:

i. any state compensation program;

ii. an insurance policy; or

iii. any federal state health benefits programs; or

b. by an entity that provides health services on a prepaid basis.

7. Other requirements as determined by the department.

K. Review and Reporting Requirements

1. The successful applicant shall sign a Memorandum of Agreement for one-time funding only for the term of one year.

2. The grantee shall then submit programmatic and expenditure reports on a periodic basis as agreed upon in the MOA.

3. An audit report shall be submitted after the end of the contract period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2195, as amended by Act 363 of 1995.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 22:

Interested persons may submit written comments or views about the proposed rule to Suzanne Lavergne, Program Manager, OPH, Health Resources Management Section, Box 1349, Baton Rouge, LA 70821, (504) 342-1276.

Bobby P. Jindal
Secretary

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

RULE TITLE: Community Based and Rural Health Services

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is estimated that there will be no implementation costs associated with this action.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rules will have no effect on revenue collections of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect projected on competition and employment from implementation of these rules.

Bobby P. Jindal
Secretary
9606#036

H. Gordon Monk
Chief Coordinator of the
Legislative Fiscal Office

NOTICE OF INTENT

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

Experimental or Investigational Medical Procedures

The Department of Health and Hospitals, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act.

The Bureau of Health Services Financing does not provide coverage for experimental or investigational medical procedures. This policy has been in effect since 1977 but has not been promulgated under the Administrative Procedure Act. Therefore, the bureau is proposing the following rule for adoption under the Administrative Procedure Act.

Proposed Rule

The Bureau of Health Services Financing proposes to adopt the following criteria to govern the coverage of medical services under the Medicaid Program.

Coverage of medical services is provided only for nonexperimental or noninvestigation procedures as identified by the American Medical Association, the Federal Drug Administration or recognized experts in the practice of medicine who can lend guidance and judgment regarding the development of new procedures.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA. 70821. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter on Wednesday, July 24, 1996 at 9:30 a.m. in the auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

Bobby P. Jindal
Secretary

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

**RULE TITLE: Experimental or Investigational
Medical Procedures**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that implementation of this proposed rule will not result in increased or decreased expenditures for the provision of services as this policy on the coverage of only nonexperimental and noninvestigation services has been in effect since 1977. Administrative expenses of \$260 for SFY 1996 only is anticipated for the promulgation of this policy under the Administrative Procedure Act.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no anticipated increase or decrease in federal revenue collections for the provision of services as a result of this proposed rule. Federal revenue collections are anticipated to increase by \$130 for SFY 1996 only as a result of administrative expenditures for promulgation of this policy under the Administrative Procedure Act.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no anticipated costs or economic benefits to directly affected persons or nongovernmental groups as a result of this proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9606#049

Richard England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Nursing Home Minimum Licensure Standards
(LAC 48:I.Chapters 97, 98, and 99)

The Department of Health and Hospitals, Bureau of Health Services Financing, proposes to adopt the following rule as authorized by R.S. 40:2009.1-2116.4. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The purpose of the nursing home licensing law and requirements is to provide for the development, establishment, and enforcement of standards of care of individuals in nursing homes and for the construction, maintenance, and operation of nursing homes which will promote safe and adequate treatment of such individuals in nursing homes. Minimum standards for the licensing of nursing homes were last adopted in 1987 with the publication of these regulations as identified above under the *Louisiana Administrative Code*. Since that time there has been a tremendous expansion of federal regulations governing long term care. Therefore, the department is now proposing to establish new licensing regulations in order to assure that a high quality of care is provided to persons residing in nursing homes.

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to repeal current licensing regulations for all nursing homes in Louisiana and proposes to adopt the following regulations which are to be contained in LAC 48:I Subpart 3 Chapters 97, 98 and 99.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter A. General Provisions

§9701. Definitions

Abuse—the infliction of physical or mental injury or the causing of the deterioration of a resident by means including, but not limited to, sexual abuse, exploitation, or extortion of funds or other things of value to such an extent that his health, moral, or emotional well-being is endangered.

Administrator—any individual who is or may be charged with the general administration of a nursing home and who has been licensed and registered by the Board of Examiners of Nursing Home Administrators in accordance with the provisions of R.S. 37:2501.

Ancillary Service—a service such as, but not limited to, podiatry, dental, audiology, vision, physical therapy, speech

pathology, occupational therapy, psychological and social services.

Applicant—the legal entity that applies for the license to open, conduct, manage or maintain a nursing home.

Change of Ownership—any change in the legal entity responsible for the operation of the facility. Management agreements are generally not changes of ownership if the former owner continues to retain policy responsibility and approve or concur in decisions involving the nursing home's operation. However, if these ultimate legal responsibilities, authorities and liabilities are surrendered and transferred from the former owner to the new manager, then a change of ownership has occurred.

Charge Nurse—an individual who is licensed by the state of Louisiana to practice as an RN or LPN and designated as a charge nurse by the nursing home.

Chemical Restraint—a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

Clinical Nurse Specialist—a registered nurse who holds a master's degree in a specific area of clinical nursing, who is recognized as a clinical nurse specialist by the Louisiana State Board of Nursing, and who uses advanced knowledge, skill and competence in the provision of direct and indirect nursing care.

Controlled Dangerous Substance—a drug, substance or immediate precursor in Schedule I through V of R.S. 40:964.

Dietary Manager—a person who:

1. is a qualified dietitian; or
2. is a graduate of a dietetic technician program; or
3. has successfully completed a course of study, by correspondence or classroom, which meets the eligibility requirements for certification by the Dietary Manager's Association; or
4. has successfully completed a training course at a state-approved school (vocational or university) which includes course work in foods, food service supervision and diet therapy. Documentation of an eight-hour course of formalized instruction in diet therapy conducted by the employing facility's qualified dietitian is permissible if the course meets only the foods and food service supervision requirements; or
5. has functioned full time in food service supervision and management in a dietary department of a nursing home for at least two years prior to the implementation of these requirements.

Director of Nursing—registered nurse licensed by the state of Louisiana who directs and coordinates nursing services in a nursing home.

Drug Administration—an act in which a single dose of a prescribed drug or biological is given to a resident by an authorized person in accordance with all laws and regulations governing such acts. The complete act of administration entails removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the physician's orders, giving the individual dose to the proper resident, and promptly recording the time and dose given.

Drug Dispensing—an act which entails the interpretation of an order for a drug or biological and, pursuant to the order, the proper selection, measuring, labeling, packaging, and issuance of the drug or biological for a resident or for a service unit of the facility by a licensed pharmacist, physician or dentist.

Fees—remittance required by rules published by the department in *Louisiana Register*, June 20, 1989: Volume 15, Number 6.

Licensed Bed—an item of furniture for sleeping, resting, relaxing or otherwise set up, or capable of being set up within 24 hours, in a nursing home for the use of one resident (unless authorized otherwise in writing by the department for sharing), based upon verified compliance with bedroom criteria expressed in these requirements.

Licensed Practical Nurse (LPN)—an individual currently licensed by the Louisiana State Board of Practical Nurse Examiners to practice practical nursing in Louisiana.

Major Alteration—any repair or replacement of building materials and equipment which does not meet the definition of minor alteration.

Medical Director—a physician licensed in Louisiana who directs and coordinates medical care in a nursing home.

Minor Alteration—repair or replacement of building materials and equipment with materials and equipment of a similar type that does not diminish the level of construction below that which existed prior to the alteration. This does not include any alteration to the function or original design of the construction.

Neglect—the failure to provide the proper or necessary medical care, nutrition, or other care necessary for a resident's well-being.

Nurses' Call System—a system that audibly registers calls electronically from its place of origin (which means the resident's bed, toilet or bathing facility) to the place of receivership (which means the nurses' station).

Nursing Home—any private home, institution, building, residence or other place, serving two or more persons who are not related by blood or marriage to the operator, whether operated for profit or not, and including those places operated by a political subdivision of the state of Louisiana which undertakes, through its ownership or management, to provide maintenance, personal care, or nursing for persons who, by reason of illness or physical infirmity or age, are unable to properly care for themselves. The term does not include the following:

1. a home, institution, or other place operated by the federal government or agency thereof, or by the state of Louisiana;
2. a hospital, sanitarium or other institution whose principal activity or business is the care and treatment of persons suffering from tuberculosis or from mental diseases;
3. a hospital, sanitarium or other medical institution whose principal activity or business is the diagnosis, care and treatment of human illness through the maintenance and operation of organized facilities therefore;
4. any municipal, parish or private child welfare agency, maternity hospital or lying-in home required by law to be licensed by some department or agency;

5. any sanitarium or institution conducted by and for Christian Scientists who rely on the practice of Christian Science for treatment and healing;

6. any nonprofit congregate housing program which promotes independent living by providing assistance with daily living activities such as cooking, eating, dressing, getting out of bed, and the like to persons living in a shared group environment who do not require the medical supervision and nursing assistance provided by nursing homes. No congregate housing program, except those licensed or operated by the state of Louisiana, shall:

- a. use the term "nursing home" or any other term implying that it is a licensed health care facility; or
- b. administer medications or otherwise provide any other nursing or medical service.

Physical Restraint—any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

Physician—an individual currently licensed by the Louisiana State Board of Medical Examiners to practice medicine and/or surgery in Louisiana.

Physician Assistant—a person who is a graduate of a program accredited by the Council on Medical Education of the American Medical Association or its successors, or who has successfully passed the national certificate examination administered by the National Commission on the Certification of Physicians' Assistants, or its predecessors, and who is approved and licensed by the Louisiana Board of Medical Examiners to perform protocol services under the supervision of a physician or group of physicians approved by the board to supervise such assistant.

Primary Nurse Associate (Nurse Practitioner)—a registered nurse who successfully completed a nurse practitioner program of studies which meets the requirements set forth in the *Louisiana Administrative Code*, who is recognized as a primary nurse associate by the Louisiana State Board of Nursing, and who provides direct nursing care to individuals, families and other groups, including primary acute or chronic care which focuses on the maintenance, achievement, and restoration of optimal functions.

Registered Dietitian—a dietitian who is qualified based on registration by the Commission on Dietetic Registration of the American Dietetic Association, and licensure by the Louisiana Board of Examiners in Dietetics and Nutrition.

Registered Nurse (RN)—an individual currently licensed by the Louisiana State Board of Nursing to practice professional nursing in Louisiana.

Registered Pharmacist—an individual currently licensed by the Louisiana Board of Pharmacy to practice pharmacy in Louisiana.

Resident—an individual admitted to the nursing home by and upon the recommendation of a physician and who is to receive the medical and nursing care ordered by the physician.

Resident Activities Director—an individual responsible for directing or providing the activity services of a nursing home.

Restorative Nursing Care—activities designed to resolve, diminish or prevent the needs that are inferred from the

resident's problem; includes the planning, implementation and evaluation of said activities in accordance with the Louisiana State Board of Nursing Legal Standards of Nursing Practice.

Social Service Designee—an individual responsible for arranging or directly providing medically-related social services.

Sponsor—an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9703. Licensing Process

A. No application for a nursing home license, renewal of a license, or change in the existing license will be considered unless such application is in writing on a form supplied by the department containing the name(s) and address(es) of the owner(s) and shall be signed by either the applicant or his representative.

1. It shall be accompanied by the fees and documentary evidence required by these licensing requirements.

2. When the secretary finds that an application is in proper order (s)he will cause whatever investigations are necessary to be made.

3. (S)He may also cause routine, periodic inspections to be made of licensed nursing homes and such special inspections and investigations as (s)he may consider necessary.

B. The applicant or applicant's designee shall disclose to the department the name and address of all individuals with 5 percent or more ownership interest, and in the instance where the nursing home is a corporation or partnership, the name and address of each officer or director, and board members.

C. If the nursing home is operated by a management company, or leased in whole or in part by another organization, the applicant or applicant's designee shall disclose to the department the name of the management firm and employer identification number, or the name of the leasing organization.

D. The nursing home shall complete the licensing application form and return it to the department at least 15 days prior to the initial licensing survey or expiration date of the current license, accompanied by a nonrefundable per annum licensing fee as provided by law. All fees shall be submitted by certified or company check or U.S. Postal money order only, made payable to DHH. All state-owned facilities are exempt from fees. The nursing home shall reapply for licensing on an annual basis.

E. The nursing home shall accept only that number of residents for which it is licensed unless prior written approval has been secured from the department.

F. If a nursing home is in substantial compliance with the Licensing Requirements for Nursing Homes and the Nursing Home Licensing Law, a license shall be issued by the department for a period of not more than 12 months, determined by the department. If a nursing home is not in substantial compliance with the Licensing Requirements for Nursing Homes and the Nursing Home Licensing Law, the department may issue a provisional license for a period of up

to six months if there is no immediate and serious threat to the health and safety of residents.

G. For an increase in bed capacity as a result of new construction, renovations or alterations, a fee as provided by law shall be remitted to the department. Approval shall be granted after an on-site survey or through the submission of a signed and dated attestation to the compliance with these licensing requirements.

H. For a replacement license when changes such as name change, address change, or bed reduction are requested in writing by the nursing home, a fee as provided by law shall be remitted.

I. For a change in licensee or premises, the buyer(s) shall submit to the department a completed application for nursing home licensing with a licensing fee as provided by law. Nursing home licensing is not transferable from one entity or owner(s) to another.

J. A processing fee as provided by law shall be submitted by the nursing home for issuing a duplicate facility license with no changes.

K. The license shall be conspicuously posted in the nursing home.

L. Licensing inspection visits should be a source of help and guidance to the operators. During these inspection visits the representatives of the department, in addition to checking compliance by the home with fire, sanitation, diet and health regulations, will review with the operator the overall plan for the care of residents and the personnel needs of the home and will also offer recommendations designed to improve the service of the home unless contraindicated by a more stringent rule, regulation or policy.

M. Exceptions to These Licensing Requirements

1. Where any requirement on an existing nursing home would impose a financial hardship but would not adversely affect the health and safety of any resident, the existing nursing home may submit a request for exception (waiver) to the department.

2. Where a more stringent requirement on an existing nursing home would impose an unreasonable hardship, the existing nursing home may submit a written request for exception along with supporting documentation to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9705. License Denial, Revocation or Nonrenewal of License

The department also may deny, suspend or revoke a license where there has been substantial noncompliance with these requirements in accordance with the Nursing Home Licensing Law. If a license is denied, suspended, or revoked, an appeal may be requested as outlined in the Nursing Home Licensing Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9707. Approval of Plans

A. All new construction, other than minor alterations, shall be done in accordance with the specific requirements of the Office of State Fire Marshal and the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals, covering new construction in nursing homes, including submission of preliminary plans and the submission of final work drawings and specifications to each of these agencies.

B. No new nursing home shall hereafter be constructed, nor shall major alterations be made to existing nursing homes, without prior written approval, and unless in accordance with plans and specifications approved in advance by the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals and the Office of State Fire Marshal. The review and approval of plans and specifications shall be made in accordance with these Licensing Requirements for Nursing Homes and the State of Louisiana Sanitary Code.

C. Before any new nursing home is licensed or before any alteration or expansion of a licensed nursing home can be approved, the applicant must furnish one complete set of plans and specifications to the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals and one complete set of plans and specifications to the Office of State Fire Marshal, together with fees and other information as may be required.

1. Plans and specifications for new construction, other than minor alterations, shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer.

2. No residential conversions will be considered for a nursing home license.

D. In the event that submitted materials do not satisfactorily comply with the aforementioned publications, the Department of Health and Hospitals shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.

E. Notice of satisfactory review from the Department of Health and Hospitals and the Office of State Fire Marshal constitutes compliance with this requirement if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes or rules of any responsible agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9709. Fire Protection

All nursing homes required to be licensed by the law shall comply with the rules, established fire protection standards and enforcement policies as promulgated by the Office of State Fire Marshal.

1. It shall be the primary responsibility of the Office of State Fire Marshal to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant

furnishing a certificate from the Office of State Fire Marshal that such applicant is complying with their provisions.

3. A provisional license may be issued to the applicant if the Office of State Fire Marshal issues the applicant a conditional certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9711. Sanitation and Patient Safety

All nursing facilities required to be licensed by the law shall comply with the rules, Sanitary Code and enforcement policies as promulgated by the Office of Public Health.

1. It shall be the primary responsibility of the Office of Public Health to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing a certificate from the Office of Public Health that such applicant is complying with their provisions.

3. A provisional license may be issued to the applicant if the Office of Public Health issues the applicant a conditional certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter B. Organization and General Services

§9713. Delivery of Services

A nursing home shall be administered in a manner that promotes the highest level of functioning and well-being of each resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9715. Governing Body

A. The nursing home shall have a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home. The governing body shall develop and approve policies and procedures which define and describe the scope of services offered. They shall be revised as necessary and reviewed at least annually.

B. The governing body shall be responsible for the operation of the nursing home.

C. The governing body shall appoint in writing a licensed administrator responsible for the management of the nursing home.

D. The governing body shall notify the department in writing by certified mail when a change occurs in the administrator position within 30 calendar days from the date the change occurs. The notice shall include the identity of the individual and the specific date the change occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9717. Administration

A. There shall be a full-time Louisiana licensed nursing facility administrator. The administrator shall be engaged in the act of administration and the activity shall be the major function of the person performing the act.

B. Another full-time employee shall be authorized in writing to act in the administrator's behalf when (s)he is absent.

C. The administrator shall notify the department in writing when a change occurs in the director of nursing position within 30 calendar days from the date the change occurs. The notice shall include the identity of the individual and the specific date the change occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9719. Personnel

A. There shall be sufficient qualified personnel to properly operate each department of the nursing home to assure the health, safety, proper care and treatment of the residents. Weekly time schedules shall be maintained which indicate the numbers and classification of all personnel, including relief personnel, who work on each tour of duty. The time schedules shall reflect all changes so as to indicate who actually worked.

1. There shall be at least two nursing service staff members actively on duty each shift.

2. Should there be a need to commingle the nursing service staff with other personnel:

a. Nurse aides shall not work in food preparation after having provided personal care to residents.

b. Laundry and housekeeping personnel shall not provide personal care to residents, unless universal precautions are taken.

c. Nursing service personnel shall not be assigned routine housekeeping duties while assigned to care for residents.

B. Personnel records shall be current and available for each employee and shall contain sufficient information to assure that they are assigned duties consistent with his or her job description and level of competence, education, preparation and experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9721. Criminal History Provisions

A. Nursing homes shall have criminal history checks performed on nonlicensed personnel in accordance with R.S. 40:1300.5 et seq.

B. All personnel requiring licensure to provide care shall be licensed to practice in the state of Louisiana. Credentials of all licensed full-time, part-time and consultant personnel shall be verified on an annual basis in writing by a designated staff member.

C. TB Testing

1. All personnel, including volunteer workers involved

in direct patient care, prior to or at the time of employment and annually thereafter shall be free of tuberculosis in a communicable state as evidenced by either:

a. a negative purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method;

b. a normal chest x-ray, if the skin test is positive; or

c. a statement from a licensed physician certifying that the individual is noninfectious if the x-ray is other than normal.

2. Employees or volunteers with positive findings shall complete an adequate course of chemotherapy for tuberculosis as prescribed by a Louisiana licensed physician, or shall present a signed statement from a Louisiana licensed physician stating that chemotherapy is not indicated.

3. An individual shall not be denied access to work solely on the basis of being infected with tuberculosis, provided the infection is not communicable.

4. Any employee or volunteer converting from a negative to a positive purified protein derivative skin test for tuberculosis, five tuberculin unit strength, given by the Mantoux method, shall be referred to a physician and followed as stated above.

D. The nursing home shall require all personnel to immediately report any sign or symptoms of a communicable disease to their supervisor or administrator, as appropriate, for possible reassignment or other appropriate action to prevent the disease or illness from spreading to residents or other personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9723. Policies and Procedures

A. There shall be written policies and procedures:

1. available to staff, residents and the public which govern all areas of care and service provided by the nursing home;

2. that ensure that each resident receives the necessary care and services to promote the highest level of functioning and well-being of each resident;

3. developed with the advice of a group of professional personnel consisting of at least a licensed physician, the administrator and the director of nursing service;

4. approved by the governing body;

5. revised as necessary, but reviewed by the professional group at least annually;

6. available to admitting physicians, sponsoring agencies, residents, and the public; and

7. that reflect awareness of, and provision for, meeting the total medical and psychosocial needs of residents, including admission, transfer, and discharge planning, and the range of services available to residents, including frequency of physician visits by each category of residents admitted.

B. The administrator or his designee is responsible, in writing, for the execution of such policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9725. Assessments and Care Plans

A. A comprehensive assessment which identifies the resident's nursing, medical, functional, activity and psychosocial needs/problems, shall be performed and documented in each resident's clinical record by a licensed nurse.

B. The assessment shall be used to develop the resident's comprehensive plan of care which reflects the specific needs/problems of the resident, interventions to meet those needs/problems and measurable objectives.

C. The assessment and care plan shall be completed within 21 days of admission.

D. The care plan shall be revised as necessary and reviewed at least quarterly by the personnel involved in the care of the resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9727. Orientation, Training and Education to Staff

A. New employees shall have an orientation program of sufficient scope and duration to inform the individual about his/her responsibilities and how to fulfill them.

B. The orientation program shall include at least a review of policies and procedures, job description and performance expectations prior to the employee performing his/her responsibilities.

C. A staff development program shall be conducted by competent staff and/or consultants and planned based upon employee performance appraisals, resident population served by the nursing home, and as determined by facility staff. All employees shall participate in in-service education programs which are planned and conducted for the development and improvement of their skills.

D. The in-service training shall include at least problems and needs common to the age of those being served, prevention and control of infections, fire prevention and safety, emergency preparedness, accident prevention, confidentiality of resident information, and preservation of resident dignity and respect, including protection of privacy and personal and property rights.

E. The in-service shall be conducted as frequently as necessary to ensure a well educated and functioning staff.

F. Records of in-service training shall be maintained which indicates the content, time, names of employees in attendance, and the name of the presenter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9729. Emergency Preparedness

A. The nursing home shall have an emergency preparedness program (which conforms to the Office of Emergency Preparedness model plan), designed to manage the consequences of natural disasters or other emergencies that

disrupt the nursing home's ability to provide care and treatment or threatens the lives or safety of the nursing home residents.

B. As a minimum, the program shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the nursing home or to another location;

2. the delivery of essential care and services to nursing home residents, whether residents are housed off-site or when additional residents are housed in the nursing home during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing home or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location, and

5. assure that the resident's family or sponsor is notified if resident is evacuated to another location.

C. The nursing home's plan shall be implemented at least annually, either in response to an emergency or in a planned drill. The nursing home's performance during implementations of the plan shall be evaluated, documented, and the plan changed where indicated.

D. The nursing home's plan shall be developed in coordination with the local/parish office of emergency preparedness, utilizing community-wide resources.

E. The plan shall be available to representatives of the Office of State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9731. Complaint Process

A. Provisions for Complaints. In accordance with R.S. 40:2009.13 et seq., the following requirements are established for receiving, evaluating, investigating, and correcting grievances pertaining to resident care in licensed nursing homes. They also provide for mandatory reporting of abuse and neglect in nursing homes.

B. Nursing Home Complaints; Procedure; Immunity

1. Any person having knowledge of the alleged abuse or neglect of a resident of a nursing home, or who has knowledge that a state law, licensure requirement, rule or regulation, or correction order promulgated by the department, or any federal certification rule pertaining to a nursing home has been violated, or who otherwise has knowledge that a nursing home resident is not receiving care and treatment to which he is entitled under state or federal laws, may submit a complaint regarding such matter to the secretary (Department of Health and Hospitals). The complaint shall be submitted to the Health Standards Section of DHH in writing, by telephone, or by personal visit where the complainant will complete and sign a form furnished by a member of the secretary's staff receiving the complaint.

2. The secretary shall designate a staff member whose responsibility shall be to assure that all complaints received are referred to the Medicaid fraud control unit or the appropriate office of the department (Health Standards Section).

3. If the complaint involves an alleged violation of any criminal law pertaining to nursing homes, the secretary shall refer the complaint to the Medicaid fraud control unit for investigation.

4. If the complaint involves any other matter, the secretary shall refer the complaint to the appropriate office for investigation in accordance with this Section.

5. Any person who in good faith submits a complaint pursuant to this section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

C. Procedure for Investigation by the Office; Confidentiality of Complaints

1. The office of the department which has received the complaint from the secretary shall review the complaint and determine whether there are reasonable grounds for an investigation. No complaint shall be investigated if:

a. in the opinion of the office, it is trivial or not made in good faith;

b. it is too outdated and delayed to justify present investigation; or

c. the complaint is not within the investigating authority of the office.

2. If the office determines that grounds for an investigation do not exist, it shall notify the complainant of its decision and the reasons within 15 work days after receipt of such complaint.

3. If grounds for an investigation do exist, the office shall initiate an investigation of such complaint and make a report to the complainant on its findings within 30 work days after receipt of the complaint.

4. The substance of the complaint shall be given to the nursing home no earlier than at the commencement of the investigation of the complaint.

5. When the substance of the complaint is furnished the nursing home, it shall not identify the complainant or the patient unless (s)he consents in writing to the disclosure. If the disclosure is considered essential to the investigation or if the investigation results in a judicial proceeding, the complainant shall be given the opportunity to withdraw the complaint.

D. Investigation Report; Correction Orders

1. The investigation report of the department shall state whether any nursing home licensing law, or any licensing requirement, rule, regulation, or correction order of the Department of Health and Hospitals, or any standard relating to the health, safety, care, or treatment of residents in nursing homes has been violated.

a. If such violation is found to exist, the appropriate departmental staff shall immediately provide notice to the secretary of such violation.

b. The report shall also contain a correction order to the nursing home. A copy of the report shall be sent by certified mail or hand delivered to the complainant and to the nursing home.

2. The correction order shall describe the violation, list the rule or law violated, and describe the corrective actions to

be taken by the nursing home.

3. A nursing home which is ordered to correct deficiencies may file a written request that the department review the corrective action taken by the home and, if necessary reinspect the home.

a. The department shall comply with the request within seven days after receipt thereof.

b. If no such request is received, the department shall review the steps taken by the home in order to comply with the corrective order and, if necessary, reinspect the home on the final date fixed for completion of the correction of the violation.

E. Hearing

1. A complainant or nursing home who is dissatisfied with the determination or investigation by the department may request a hearing.

2. A request for a hearing shall be submitted in writing to the secretary within 30 days after the report of the department has been mailed in accordance with the provisions of R.S. 40:2009.15(A)(1).

3. Notice of the time and place fixed for the hearing shall be sent to the complainant and the nursing home.

4. All appeal procedures shall be conducted in accordance with the Administrative Procedure Act.

F. Retaliation by Nursing Home

1. No discriminatory or retaliatory action shall be taken by any health care facility or government agency against any person or client by whom or for whom any communication was made to the department or unit, provided the communication is made in good faith for the purpose of aiding the office or unit to carry out its duties and responsibilities.

2. Notice of the complaint procedure, complete with the name, address, and telephone number of the Health Standards Section of the Office of the Secretary of the Department of Health and Hospitals, shall be posted conspicuously in the nursing home at places where residents gather, including, but not limited to, the administrative office, the dining hall, the activity room, and all nurses' stations.

G. In accordance with R.S. 14:403.2, 14:93.3, 14:93.4 and 14:93.5, all nursing homes shall adhere to the Adult Protective Services laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter C. Resident Rights

§9733. Statement of Rights and Responsibilities

A. In accordance with R.S. 40:2010.8 et seq., all nursing homes shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement. The statement shall assure each resident the following:

1. the right to civil and religious liberties, including but not limited to knowledge of available choices, the right to independent personal decision, and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these civil and religious rights;

2. the right to private and uncensored communications, including but not limited to receiving and sending unopened correspondence; access to a telephone; visitation with any person of the resident's choice; and overnight visitation outside the facility with family and friends in accordance with nursing home policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the loss of his bed;

3. nursing home visiting hours shall be flexible, taking into consideration special circumstances such as out-of-town visitors and working relatives or friends. With the consent of the resident and in accordance with the policies approved by the Department of Health and Hospitals, the home shall permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure and planning programs, and members of the clergy access to the home during visiting hours for the purpose of visiting with and providing services to any resident;

4. the right to present grievances on behalf of himself or others to the nursing home's staff or administrator, to governmental officials, or to any other person; to recommend changes in policies and services to nursing home personnel; and to join with other residents or individuals within or outside the home to work for improvements in resident care, free from restraint, interference, coercion, discrimination or reprisal;

a. this right includes access to the resident's sponsor and the Department of Health and Hospitals; and

b. the right to be a member of, to be active in, and to associate with advocacy or special interest groups.

5. the right to manage his own financial affairs or to delegate such responsibility to the nursing home, but this delegation may be only to the extent of the funds held in trust by the home for the resident. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident and his sponsor if requested. A copy shall be retained in the resident's records on file in the home;

6. the right to be fully informed, in writing and orally, prior to or at time of admission and during his stay, of services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates, and of bed reservation and refund policies of the home;

7. the right to be adequately informed of his medical condition and proposed treatment, unless otherwise indicated by the resident's physician; to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to be informed of the consequences of such actions;

8. the right to receive adequate and appropriate health care and protective and support services, including services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules promulgated by the Department of Health and Hospitals;

9. the right to have privacy in treatment and in caring for personal needs;

a. to have closed room doors, and to have facility personnel knock before entering the room, except in case of an emergency or unless medically contraindicated;

b. to have confidentiality in the treatment of personal and medical records; and

c. to be secure in storing and using personal possessions, subject to applicable state and federal health and safety regulations and the rights of other residents;

d. privacy of the resident's body shall be maintained during, but not limited to toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

10. the right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and oral explanations of the services provided by the home, including statements and explanations required to be offered on an as-needed basis;

11. the right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized by a physician for a specified and limited period of time or those necessitated by an emergency;

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth in writing the circumstances requiring the use of the restraint, and, in case of a chemical restraint, a physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety;

12. the right to be transferred or discharged only if necessary for his welfare and if his needs cannot be met in the facility; his health has improved sufficiently so that he no longer needs the services provided by the facility; the safety of individuals in the facility is endangered; the health of individuals in the facility would otherwise be endangered; he has failed after reasonable and appropriate notice to pay or have paid for a stay at the facility; or the facility ceases to operate;

a. both the resident and his legal representative or interested family member if known and available, have the right to be notified in writing in a language and manner they understand of the transfer and discharge;

b. the notice must be given no less than 30 days in advance of the proposed action, except that the notice may be given as soon as is practicable prior to the action in the case of an emergency;

c. in facilities not certified to provide services under Title XVIII or Title XIX of the Social Security Act, the advance notice period may be shortened to 15 days for nonpayment of a bill for a stay at the facility;

i. the resident or his legal representative or interested family member, if known and available, has the right to appeal any transfer or discharge to the Department of Health and Hospitals, which shall provide a fair hearing in all such appeals;

ii. the facility must ensure that the transfer or discharge is effectuated in a safe and orderly manner;

iii. the resident and his legal representative or interested family member, if known and available, shall be consulted in choosing another facility if facility placement is required;

13. the right to select a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities and programs, unless medically contraindicated, as documented by a physician in the resident's medical record, and such participation would violate infection control laws or regulations;

14. the right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented by a physician in the resident's medical record. Clothing need not be provided to the resident by the home except in emergency situations. If provided, it shall be of reasonable fit;

15. the right to have copies of the nursing home's rules and regulations and an explanation of the resident's responsibility to obey all reasonable rules and regulations of the nursing home and of his responsibility to respect the personal rights and private property of other residents;

16. the right to be informed of the bed reservation policy for a hospitalization;

a. the nursing home shall inform a private pay resident and his responsible party or sponsor that his bed shall be reserved for any single hospitalization for a period up to 30 days, provided the nursing home receives reimbursement;

b. notice shall be provided within 24 hours of the hospitalization;

17. the right to receive a prompt response to all reasonable requests and inquiries;

18. the right of the resident to withhold payment for physician visitation if the physician did not examine the resident;

19. the right to refuse to serve as a medical research subject without jeopardizing access to appropriate medical care;

20. the right to use tobacco at his own expense under the home's safety rules and under applicable laws and rules of the state, unless the facility's written policies preclude smoking in patient rooms;

21. the right to consume a reasonable amount of alcoholic beverages at his own expense, unless:

a. not medically advisable as documented in his medical record by the attending physician; or

b. unless alcohol is contraindicated with any of the medications in the resident's current regime; or

c. unless expressly prohibited by published rules and regulations of a nursing home owned and operated by a religious denomination which has abstinence from the consumption of alcoholic beverages as a part of its religious belief;

22. the right to retire and rise in accordance with his reasonable requests, if he does not disturb others and does not disrupt the posted meal schedules and, upon the home's request, if he remains in a supervised area unless retiring and rising in accordance with the resident's request is not medically advisable as documented in his medical record by the attending physician;

23. the right to have any significant change in his health status immediately reported to him and his legal representative or interested family member, if known and available, as soon as such a change is known to the home's staff.

B. A sponsor may act on a resident's behalf to assure that the nursing home does not deny the resident's rights under the provisions of R.S. 40:2010.6 et seq., and no right enumerated therein may be waived for any reason whatsoever.

C. Each nursing home shall provide a copy of the statement required by R.S. 40:2010.8(A) to each resident and sponsor upon or before the resident's admission to the home and to each staff member of the home. The statement shall also advise the resident and his sponsor that the nursing home is not responsible for the actions or inactions of other persons or entities not employed by the facility, such as the resident's treating physician, pharmacists, sitter, or other such persons or entities employed or selected by the resident or his sponsor. Each home shall prepare a written plan and provide appropriate staff training to implement the provisions of R.S. 40:2010.6 et seq., including but not limited to an explanation of the following:

1. the residents' rights and the staff's responsibilities in the implementation of those rights;

2. the staff's obligation to provide all residents who have similar needs with comparable services as required by state licensure standards.

D. In order to determine whether a home is adequately protecting residents' rights, inspection of the home by the Department of Health and Hospitals shall include private, informal conversations with a sample of residents to discuss residents' experiences within the home with respect to the rights specified in R.S. 40:2010.6 et seq., and with respect to compliance with departmental standards.

E. Any person who submits or reports a complaint concerning a suspected violation of residents' rights, or concerning services or conditions in a home or health care facility, or who testifies in any administrative or judicial proceedings arising from such complaint, shall have immunity from any criminal or civil liability therefor, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justiciable issue of either law or fact raised by the complaining party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter D. Sanctions and Appeal Procedures

§9735. Authority and Scope

A. Any person or entity found to be in violation of any provision of R.S. 40:2009.1-40:2009.11 may be sanctioned by revocation of license, nonrenewal of license or by civil fines or by those mandated by federal law including:

1. plan of correction;
2. monitoring;
3. special staffing requirements;
4. temporary management.

B. The secretary or his designee may impose any of the above cited sanctions separately or in combination. In

addition to the foregoing administrative remedies, the secretary may have recourse to any judicial remedies provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9737. Considerations

The secretary shall impose the sanction(s) which will bring the nursing home into compliance in the most efficient and effective manner with the care and well-being of the residents being the paramount consideration. The secretary's decision shall be based on an assessment of some or all of the following factors:

1. whether the violations pose an immediate threat to the health or safety of the residents;
2. the duration of the violations;
3. whether the violation (or one that is substantially similar) has previously occurred during the last three consecutive surveys;
4. the nursing home's history of compliance during the last three consecutive surveys;
5. what sanction is most likely to cause the facility to come into compliance in the shortest amount of time;
6. the severity of the violation if it does not pose an immediate threat to health or safety;
7. the logistical feasibility of implementing the sanction;
8. the "good faith" exercised by the facility in attempting to stay in compliance;
9. the financial benefit to the facility of committing or continuing the violation;
10. such other factors as the secretary deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9739. Repeat Violations

When the nursing home is found to have repeat violations, the secretary or the secretary's designee may increase the civil fines imposed as specified by R.S. 40:2009.11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9741. Notice and Appeal Procedure

Unless otherwise indicated, any sanction may be administratively appealed in the manner described as long as the appeal is timely filed following notice of the department's decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9743. Civil Money Penalties (Fines)

A. The following listed civil fines pertaining to classified violations may be assessed by the secretary against nursing

homes. In the case of Class A violations, the following civil fines shall be assessed. In the cases of Class B, C, D or E violations, the secretary, in his discretion, may elect to assess the following civil fines or may allow a specified period of time for correction of said violation. For Class D and E violations, the facility will be given notice of the fine at the time of the first violation and may be given an opportunity to demonstrate compliance before the fine becomes final.

1. If compliance is demonstrated on the follow-up visit, payment of the fine may be waived. In all instances the violation is counted and recorded.

2. If compliance is not demonstrated at the next visit, the penalty for a repeat violation will be assessed. No facility shall be penalized because of a physician's or consultant's nonperformance beyond the facility's control or if the violation is beyond the facility's control, if the situation and the efforts to correct it are clearly documented.

3. It is not the intent that every violation found on a survey, inspection, or related visit should be accompanied by an administrative penalty.

B. Class A violations are subject to a civil fine which shall not exceed \$2,500 for the first violation. A second Class A violation occurring within an 18-month period from the first violation shall not exceed \$5,000 per day.

C. Class B violations are subject to a civil fine which shall not exceed \$1,500 for the first violation. A second Class B violation occurring within an 18-month period from the first violation shall not exceed \$3,000 per day.

D. Class C violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. A second Class C violation occurring within an 18-month period from the first violation shall not exceed \$2,000 per day.

E. Class D violations are subject to a civil fine which shall not exceed \$100 for the first violation. Each subsequent Class D violation within an 18-month period from the first violation shall not exceed \$250 per day.

F. Class E violations are subject to a civil fine which shall not exceed \$50 for the first violation. Each subsequent Class E violation occurring within an 18-month period from the first violation shall not exceed \$100 per day.

G. The total amount of fines assessed for violations determined in any one month shall not exceed \$5,000, except that the aggregate fines assessed for Class A or B violations shall not exceed \$10,000 in any one month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9745. Factors in Assessment of Civil Fines

In determining whether a civil fine is to be assessed and in affixing the amount of the fine to be imposed, the secretary shall consider:

1. the gravity of the violation including the probability that death or serious physical harm to a resident will result or has resulted;
2. the severity and scope of the actual or potential harm;
3. the extent to which the provisions of the applicable statutes or regulations were violated;

4. the "good faith" exercised by the licensee. Indications of good faith include, but are not limited to:

- a. prior accomplishments manifesting the licensee's desire to comply with requirements;
 - b. efforts to correct;
 - c. any other mitigating factors in favor of the licensee;
5. any relevant, previous violations committed by the licensee;
6. the financial benefit to the licensee of committing or continuing the violation;
7. approved waivers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9747. Right to Assess Civil Fines Not Merged in Other Remedies

Assessment of a civil fine provided by this Subchapter shall not affect the right of the Department of Health and Hospitals to take such other action as may be authorized by law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9749. Classes of Violations Defined

A. Class A Violations are those violations which create a condition or occurrence relating to the operation and maintenance of a nursing home which result in death or serious harm to a resident. The following examples of Class A violations are provided for illustrative purposes only and are subject to the conditions outlined in this Subchapter.

1. Death of a Resident. Any condition or occurrence relating to the operation of a nursing home in which the conduct, act, or omission of a person or actor purposely, knowingly, or negligently results in the death of a resident shall be a Class A violation.

2. Serious Physical Harm to a Resident. Any condition or occurrence relating to the operation of a nursing home in which the conduct, act, or omission of a person or actor purposely, knowingly, or negligently results in serious physical harm to a resident shall be a Class A violation.

B. Class B Violations are those violations which create a condition or occurrence relating to the operation and maintenance of a nursing home which create a substantial probability that death or serious physical harm to a resident will result from the violation.

1. The following examples of Class B violations are provided for illustrative purposes only and are subject to the conditions outlined in this Subchapter.

2. The following conduct, acts, or omissions, which do not result in death or serious physical harm but which create a substantial probability that death or serious physical harm to a resident will result therefrom, are conditions or occurrences relating to the operation of a nursing home and are Class B violations:

a. Nursing Techniques. A Class B violation shall exist when good nursing practice is not exercised and this results in the following occurrences:

i. medications or treatments are improperly administered or withheld by nursing personnel;

ii. there is a failure to adequately and appropriately feed residents who are unable to feed themselves or there is use of specialized feeding equipment or substances which are outdated, not protected from contamination, or incorrectly used;

iii. there is a failure to change or irrigate catheters as ordered by a physician or there is use of irrigation sets or solutions which are outdated or not protected from contamination;

iv. there is a failure to obtain physician orders for the use, type and duration of restraints, or physical restraints are improperly applied, or facility personnel fail to check and release restraint as specified in regulations;

v. staff knowingly fails to answer call lights;

vi. there is a failure to turn or reposition as ordered by a physician or as specified in regulations;

vii. there is a failure to provide rehabilitative nursing as ordered by a physician or as specified in regulations.

b. Poisonous Substances. A Class B violation shall exist when a facility fails to provide proper storage of poisonous substances.

c. Falls by Residents. A Class B violation shall exist when a facility fails to maintain required direct care staffing, follow physician's orders, provide a safe environment, or address a history of falls on a resident's care plan, and this failure directly causes a fall by a resident. (Examples: Equipment not properly maintained or a fall due to personnel not responding to a resident's request for assistance).

d. Assaults. A Class B violation shall exist when a facility fails to maintain required direct care staffing, adequately trained staff, or take appropriate measures when it is known that a resident is combative or assaultive with other residents, and this failure causes an assault upon a resident of the facility by another resident. A Class B violation shall also exist when a facility fails to perform adequate screening of personnel and this failure causes an assault upon a resident by an employee of the facility.

e. Permanent Injury to a Resident. A Class B violation shall exist when facility personnel improperly apply physical restraints as directed by physician's orders or regulations and this failure causes permanent injury to a resident.

f. Nosocomial Infection. A Class B violation shall exist when a facility does not follow or meet nosocomial infection control standards as outlined by regulations or as ordered by the physician.

g. Medical Services. A Class B violation shall exist when a facility fails to secure proper medical assistance or orders from a physician and this creates the probability of death or serious harm of a resident.

h. Decubitus Ulcers. A Class B violation shall exist when a facility does not take decubitus ulcer measures as ordered by the physician or facility personnel fail to notify the

physician of the existence or change in the condition of such ulcers and such failure creates a probability of death or serious physical harm of a resident.

i. **Treatments.** A Class B violation shall exist when facility personnel performs treatment(s) contrary to a physician's order or fail to perform such treatments and such treatment creates the probability of death or serious physical harm of a resident.

j. **Medications.** A Class B violation shall exist when facility personnel knowingly withhold medication from a resident as ordered by a physician and such withholding of medication(s) creates the probability of death or serious injury of a resident, or facility personnel fails to order and/or stock medication(s) prescribed by the physician and the failure to order and/or stock medication(s) creates a probability of death or serious harm of a resident.

k. **Elopement.** A Class B violation shall exist when a facility does not provide reasonable supervision of residents to prevent a resident from wandering away from the facility and such failure creates the probability of death or serious harm to a resident, or a facility does not provide adequate measures to ensure that residents with an elopement history do not wander away from the facility. (Examples of preventive measures include but are not limited to documentation that an elopement history has been discussed with the family or other caretaker of the resident, alarms have been placed on exit doors, personnel have been trained to make additional effort to watch the resident with such history, and the physician of such resident has been made aware of such history).

l. **Failure to Provide Heating or Air Conditioning.** A Class B violation shall exist when a facility fails to reasonably maintain its heating and air-conditioning system as required by regulation. Isolated incidents of breakdown or power failure shall not be considered Class B violations under this Subchapter.

m. **Natural Disaster/Fire.** A Class B violation shall exist when a facility does not train staff in fire/disaster procedures as required by regulations or when staffing requirements are not met.

n. **Life Safety Code System.** A Class B violation shall exist when a facility fails to maintain the required life safety code system. Isolated incidents of breakdown shall not be considered a Class B violation if the facility has immediately notified the Health Standards Section upon discovery of the problem and has taken all necessary measures to correct the problem.

o. **Nursing Equipment/Supplies.** A Class B violation shall exist if equipment and supplies to care for a resident as ordered by a physician are not provided, or if the facility does not have sufficient equipment and supplies for residents as specified by regulation and these conditions create a probability of death or serious harm to a resident.

p. **Call System.** A Class B violation shall exist when a facility fails to maintain a resident call system or the call system is not functioning for a period of more than 24 hours.

i. If call system cords are not kept within reach of residents then it will be determined that the facility has failed to maintain a resident call system and this failure creates a probability of death or serious physical harm to a resident.

ii. The above examples of Class B violations are provided for illustrative purposes only.

C. **Class C Violations.** The following conduct, acts, or omissions which do not result in death or serious physical harm to a resident or the substantial probability thereof but create a condition or occurrence relating to the operation and maintenance of a nursing home that create a potential for harm by directly threatening the health, safety, rights or welfare of a resident are Class C violations. The following examples of Class C violations are provided for illustrative purposes only and are subject to the conditions outlined in this Subchapter.

1. **Nursing Techniques.** A Class C violation shall exist when good nursing practice is not exercised and this results in the following occurrences:

a. medications or treatments are improperly administered or withheld by nursing personnel;

b. there is a failure to adequately and appropriately feed residents who are unable to feed themselves or there is use of specialized feeding equipment and substances which are outdated, not protected from contamination or incorrectly used;

c. there is a failure to change or irrigate catheters as ordered by a physician or there is use of irrigation sets and solutions which are outdated or not protected from contamination.

d. there is a failure to obtain physician orders for the use, type, and duration of restraints, or physical restraints are improperly applied, or facility personnel fail to check and release the restraint as specified in regulations;

e. staff knowingly fails to answer call lights;

f. there is a failure to turn or reposition residents as ordered by a physician or as specified in regulations;

g. there is a failure to provide rehabilitative nursing as ordered by a physician or as specified in regulations.

2. **Poisonous Substances.** A Class C violation shall exist when a facility fails to provide proper storage of poisonous substances and this failure threatens the health, safety, rights or welfare of a resident.

3. **Falls by Residents.** A Class C violation shall exist when it is determined that falls may occur in a facility as a result of the facility's failure to maintain required direct care staffing or a safe environment (including adequate training of staff) as set forth in regulation and this failure threatens the health, safety, rights, or welfare of a resident.

4. **Assaults.** A Class C violation shall exist when a facility fails to maintain required direct care staffing or measures are not taken when it is known that a resident is combative and assaultive with other residents and this lack threatens the health, welfare, rights, or safety of a resident.

5. **Improper Use of Restraints.** A Class C violation shall exist when facility personnel apply physical restraints contrary to published regulations or fail to check and release such restraints as directed by physician's order or regulations and such failure threatens the health, safety, rights, or welfare of a resident.

6. **Medical Services.** A Class C violation shall exist when a facility fails to secure proper medical assistance or

orders from a physician and this failure threatens the health, safety, rights or welfare of a resident.

7. **Decubitus Ulcers.** A Class C violation shall exist when a facility does not take decubitus ulcer measures as ordered by the physician and this failure threatens the health, safety, rights or welfare of a resident, or facility personnel fail to notify the physician of such ulcers or change in a resident's condition with regard to decubitus ulcers and this failure threatens the health, safety, rights or welfare of a resident.

8. **Treatments.** A Class C violation shall exist when facility personnel perform treatments contrary to physician's order or fail to perform such treatments and such treatment threatens the health, safety, rights, or welfare of a resident.

9. **Medications.** A Class C violation shall exist when facility personnel withhold physician ordered medication(s) from a resident and such withholding threatens the health, safety, rights, or welfare of a resident, or facility personnel fail to order or stock medication(s) prescribed by the physician and this failure threatens the health, safety, rights, or welfare of a resident.

10. **Elopement.** A Class C violation shall exist when a facility does not provide reasonable supervision of residents to prevent a resident from wandering away from the facility and such failure threatens the health, safety, rights, or welfare of a resident, or a facility does not provide adequate measures to ensure that residents with a history of elopement do not wander away from the facility and such failure threatens the health, safety, rights, or welfare of a resident.

11. **Food on Hand.** A Class C violation shall exist when there is an insufficient amount of food on hand in the facility to meet the menus for the next three-day period and this failure threatens the health, safety, rights, or welfare of a resident.

12. **Nursing Equipment/Supplies.** A Class C violation shall exist if equipment and supplies to care for a resident as ordered by a physician are not provided, or if the facility does not have sufficient equipment and supplies for residents as specified by regulation and these conditions threaten the health, safety, rights, or welfare of a resident.

13. **Call System.** A Class C violation shall exist when a facility fails to maintain a resident call system or the call system is not functioning for a period of 24 hours. If call system cords are not kept within reach of residents then it will be determined that the facility has failed to maintain a resident call system and this failure threatens the health, safety, rights, or welfare of a resident.

14. **Heating and Air Conditioning.** A Class C violation shall exist when a facility fails to maintain its heating and air-conditioning systems as required by regulation and such failure threatens the health, safety, rights, or welfare of a resident. Isolated incidents of breakdown or power failure shall not be considered a Class C violation under this section.

15. **Natural Disaster/Fire.** A Class C violation shall exist when a facility does not train staff in fire/disaster procedures as required by regulations or when staffing requirements are not met and this failure threatens the health, safety, rights, or welfare of a resident.

16. **Life-Safety Code System.** A Class C violation shall exist when a facility fails to maintain the required life-safety

systems and this threatens the health, safety, rights or welfare of a resident. Isolated incidents of breakdown shall not be considered a Class C violation if the facility has immediately notified the Health Standards Section upon discovery of the problem and has taken all necessary measures to correct the problem.

17. **Dietary Allowance.** A Class C violation shall exist when it is determined that the minimum dietary needs of a resident are not being met as ordered by the physician.

18. **Resident Rights.** A Class C violation shall exist when facility personnel fail to inform a resident of his resident rights as outlined in regulation, or facility personnel fail to allow a resident to honor or exercise any of his rights as outlined in regulation or statute.

19. **Sanitation.** A Class C violation shall exist when it is determined that regulations relating to sanitation are not met.

20. **Administrator.** A Class C violation shall exist when it is determined that a facility does not have a licensed administrator for 30 or more consecutive days as required by regulation.

21. **Director of Nurses.** A Class C violation shall exist when it is determined that a facility does not have a director of nurses (DON) as required by regulation for 30 or more consecutive days unless a waiver has been granted by the department.

22. **Notice of Staff Vacancy.** A Class C violation shall exist when it is determined that a facility does not have a licensed administrator or a director of nurses and has not notified the bureau within 10 days as required by regulation.

D. Class D Violations. Those violations which are related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a resident. The following examples of Class D violations are provided for illustrative purposes only and are subject to the conditions outlined in this Subchapter.

1. **Overbidding.** A Class D violation shall exist when a facility is found to exceed its licensed bed capacity.

2. **False Reporting.** A Class D violation shall exist when it has been determined that a report, physician's orders, nurses' notes, patient account records, staffing records, or other documents or records which the facility is required to maintain have been intentionally falsified.

3. **Resident Trust Funds.** A Class D violation shall exist when it is determined that the facility's records reflect that resident trust funds have been misappropriated by facility personnel or if a resident has been charged for items which the facility must provide at no cost to the resident.

4. **Denial of Access of Facility.** A Class D violation shall exist when it is determined that personnel from the Louisiana Department of Health and Hospitals, the United States Department of Health and Human Services, or personnel of any other agency authorized to have access to any nursing home have been denied access to the facility or to any facility document record.

5. **Reporting of Unusual Occurrences/Accidents.** A Class D violation shall exist when it has been determined that a facility did not report any unusual occurrences or accidents in a timely manner as mandated by regulation.

6. Residents' Council. A Class D violation shall exist when a facility fails to allow a resident access to an established residents' council if one exists.

E. Class E Violations. Class E violations are defined as the failure of any nursing home to submit a statistical or financial report in a timely manner as required by regulations. The failure to timely submit a statistical or financial report shall be considered a separate Class E violation during any month or part thereof in noncompliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9751. Collection of Civil Fines Assessed

Civil fines assessed shall be final if:

1. no timely or proper appeal was requested;
 2. the facility admits the violations and agrees to pay;
- and

3. the administrative hearing is concluded with findings of violations and time for seeking judicial review has expired. When civil fines become final, they shall be paid in full within 10 days of their commencement unless the department allows a payment schedule in light of a documented financial hardship. Such documentation shall be submitted within the 10-day period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9753. Revocation of License

A. The secretary of the Department of Health and Hospitals may deny an application for a license or refuse to renew a license or may revoke an outstanding license when an investigation reveals that the applicant or licensee is in nonconformance with or in violation of the provisions of R.S. 40:2009.6, provided that in all such cases, the secretary shall furnish the applicant or licensee 30 calendar days written notice specifying reasons for the action.

1. The secretary, in a written notice of denial, nonrenewal, or revocation of a license shall notify the applicant or licensee of his right to file a suspensive appeal with the Office of the Secretary within 30 calendar days from the date the notice, as described in this Subchapter, is received by him.

2. This appeal or request for a hearing shall specify in detail reasons why the appeal is lodged and why the appellant feels aggrieved by the action of the secretary.

3. When any appeal as described in this Subchapter is received by the secretary, if timely filed, he shall appoint an impartial three-member board to conduct a hearing on the appeal at such time and place as such members deem proper, and after such hearing to render a written opinion on the issues presented at the hearing.

a. The written decision or opinion of a majority of the members conducting the hearing shall constitute final administrative action on the appeal.

b. Any member of said board or the secretary shall have power to administer oaths and to subpoena witnesses on

behalf of the board or any party in interest and compel the production of books and papers pertinent to any investigation or hearing authorized by this Subchapter, provided that in all cases witness fees and transportation and similar hearing costs shall be paid by the appellant or by the Department of Health and Hospitals if the appellant is found innocent of charges.

4. Any person having been served with a subpoena who shall fail to appear in response to the subpoena or fail or refuse to answer any question or fail to produce any books or papers pertinent to any investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment of not less than one month nor more than six months, or by both such fine and imprisonment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Chapter 98. Nursing Homes

Subchapter A. Physician Services

§9801. Medical Director

A. The nursing home shall designate, pursuant to a written agreement, a physician currently licensed to practice medicine by the Louisiana State Board of Medical Examiners to serve as medical director.

B. The medical director shall be responsible for the overall coordination of the medical care in the nursing home by providing oversight and supervision of physician services and the medical care of residents.

C. The medical director shall approve all medical care policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9803. Physician Supervision

A. A resident shall be admitted to the nursing home only with an order from a physician licensed to practice in Louisiana.

1. Each resident shall remain under the care of a physician licensed to practice in Louisiana and shall have freedom of choice in selecting his/her attending physician.

2. The nursing home shall be responsible for assisting in obtaining an attending physician with the resident's or sponsor's approval when the resident or sponsor is unable to find one.

B. Another physician supervises the medical care of residents when their attending physician is unavailable.

C. Any required physician task may also be satisfied when performed by a primary nurse associate, clinical nurse specialist, or physician assistant who is not an employee of the nursing home but who is working in collaboration with a physician.

D. The nursing home shall provide or arrange for the provision of physician services 24 hours a day, in case of emergency.

E. The name and telephone numbers of the attending physicians and the physicians to be called in case of emergency when the attending physician is not available shall be posted at each nursing station. Upon request, the telephone numbers of the attending physician or his/her replacement in case of emergency shall be provided to the resident, guardian, or responsible party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9805. Physician Visits and Responsibilities

A. At the time each resident is admitted, the nursing home shall have attending physician orders for the resident's immediate care. At a minimum, these orders shall consist of dietary, drugs (if necessary), and routine care to maintain or improve the resident's functional abilities.

B. If the orders are from a physician other than the resident's attending physician, they shall be communicated to the attending physician and verification entered into the resident's clinical record by the nurse who took the orders.

C. A physical examination shall be performed by the attending physician within 48 hours after admission unless such examination was performed within five days prior to admission with the following exceptions:

1. if the physical examination was performed by another physician, the attending physician may attest to its accuracy by countersigning it and placing a copy in the resident's record; or

2. if the resident is transferring from another nursing home with the same attending physician, a copy of the previous physical examination may be obtained from the transferring facility with the attending physician initialing its new date. The clinical history and physical examination, together with diagnoses shall be in the resident's medical record.

D. Each resident shall be seen by their attending physician at intervals to meet the medical needs of the resident but at least annually.

E. At each visit, the attending physician shall write, date and sign progress notes.

F. The physician's treatment plan (physician's orders) shall be reviewed by the attending physician at least once every six months.

G. Physician telephone/verbal orders shall be received only by physicians, pharmacists, or licensed nurses. These orders shall be reduced to writing in the resident's clinical record and signed and dated by the authorized individual receiving the order. Telephone/verbal orders shall be countersigned by the physician within seven days.

H. Use of signature stamps by physicians is allowed when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative office of the nursing home shall have on file a signed statement to the effect that the physician is the only one who has the stamp and uses it. There shall be no delegation of signature stamps to another individual.

I. Physicians shall sign either a discharge summary within

90 days of discharge/transfer or a death note within 30 days of death.

J. At the option of the nursing home, any required physician task in a nursing home may also be satisfied when performed by a primary nurse associate (also known as nurse practitioner), clinical nurse specialist when these tasks are within their realm of education and practice, or physician assistant when these tasks are so identified within their protocols and who is not an employee of the nursing home but who is working in collaboration with an attending physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9807. Standing Orders

A. Physician's standing orders are permissible but must be individualized, taking into consideration such things as drug allergies, sex specific orders and the pertinent physical condition of the resident.

B. Only over-the-counter drugs are to be utilized on a physician's standing orders. Controlled or prescription drugs must be an individual order reduced to writing on the physician's order sheet as either a routine or pro re nata (prn) order. Each order shall include the following:

1. name of the medication;
2. strength of the medication;
3. specific dose of the medication (not a dose range);
4. route of administration;
5. reason for administration;
6. time interval between doses for administering the medication;
7. maximum dosage or number of times to be administered in a specific time frame; and
8. when to notify the physician if the medication is not effective.

C. Standing orders shall be signed and dated by the physician initially and at least annually thereafter.

D. A copy of the standing orders shall be maintained in the resident's active clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter B. Nursing Services

§9809. General Provisions

The nursing home shall have sufficient nursing staff to provide nursing and related services that promote the highest level of functioning and well-being of each resident. The nursing home shall assure that each resident receives treatments, medications, diets and other health services as prescribed and planned, all hours of each day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9811. Nursing Service Personnel

A. The nursing home shall provide a sufficient number of nursing service personnel consisting of registered nurses,

licensed practical nurses, nurse aides and ward clerks to provide nursing care to all residents in accordance with resident care plans 24 hours per day.

1. As a minimum, the nursing home shall provide 1.5 hours of care per patient each day.

2. Nursing service personnel shall be assigned duties consistent with their education and experience, and based on the characteristics of the resident load and the kinds of nursing skills needed to provide care to the residents.

3. Nursing service personnel shall not be deemed to be on duty unless actively participating and directing the delivery of resident care. Licensed nurse coverage shall be provided 24 hours per day.

B. The nursing home shall designate a registered nurse to serve as the director of nursing services on a full-time basis during the day-tour of duty. The director of nursing services may serve as charge nurse only when the nursing home has an average daily occupancy of 60 or fewer residents.

C. If the director of nursing services has nonnursing administrative responsibility for the nursing home on a regular basis, there shall be another registered nurse assistant to provide direction of care-delivery to residents.

D. There shall be on duty at all times at least one licensed nurse to serve as charge nurse responsible for the supervision of the total nursing activities in the nursing home or assigned nursing unit.

E. Nurse aides shall be assigned duties consistent with their training and successful demonstration of competencies.

F. In building complexes or multistory buildings, each building or floor housing residents shall be considered a separate nursing unit and staffed separately exclusive of the director of nursing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9813. Nursing Care

A. Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practice. Residents unable to carry out activities of daily living shall receive the necessary services to maintain good nutrition, grooming, personal and oral hygiene.

B. Each resident shall be kept clean, dry, free of offensive body and mouth odor, well-groomed and dressed appropriately for the time of day and the environment. Skin care shall be provided to each resident as needed to prevent dryness, scaling, irritation, itching and/or pressure sores.

C. Restorative nursing care shall be provided to each resident to achieve and maintain the highest possible degree of function, self-care, and independence. Restorative nursing care shall be provided for the residents requiring such care and shall be documented as performed.

D. Residents requiring assistance at mealtimes shall be assisted promptly when necessary.

E. The nursing home shall endeavor to keep residents free from pressure sores with measures taken toward their prevention.

F. Residents requiring restraints shall be restrained with standard types of devices applied in a manner consistent with manufacturer's specifications and that permits speedy removal in the event of an emergency. Each restrained resident shall be monitored every 30 minutes and released for 10 minutes every two hours. Restraints shall not be used for punishment nor convenience of staff.

G. The nursing home shall promptly inform the resident, consult with the resident's attending physician, and if known, notify the resident's legal representative or interested family member and maintain documentation when there is an accident which results in injury and has the potential for requiring physician intervention, or significant change in the resident's physical, mental or psychosocial status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter C. Dietetic Services

§9815. General Provisions

The nursing home shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9817. Dietary Service Personnel

A. The nursing home shall employ a registered dietitian either full time, part time or on a consultant basis. A minimum consultation time shall be not less than eight hours per month and as needed, to ensure nutritional needs of residents are addressed timely. There shall be documentation to support that the consultation time was given.

B. If a registered dietitian is not employed full-time, the nursing home shall designate a full-time person to serve as the dietary manager.

C. Residents at nutritional risk shall have an in-depth nutritional assessment conducted by the consulting dietitian.

D. The nursing home shall employ sufficient support personnel competent to carry out the functions of the dietary services.

E. Food service personnel shall be on duty daily for a period of 12 or more continuous hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9819. Menus and Nutritional Adequacy

A. Menus shall be planned, approved, signed and dated by a registered dietitian prior to use in the nursing home to meet the nutritional needs of the residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council and the National Academy of Sciences, taking into account the cultural background and food habits of residents, or as modified in accordance with the orders of the practitioner(s) responsible for the care of the resident.

1. Menus shall be written for each therapeutic diet ordered.

2. If cycle menus are used, the cycle shall cover a minimum of three weeks and shall be different each day of the week.

3. Each day's menu shall show the actual date served and shall be retained for six months.

4. Menus for the current week shall be posted in a public place, or supplied to the residents, and where food is prepared and served for dietary personnel. Portion sizes shall be reflected either on the menu or within the recipe used to prepare the meal.

B. Therapeutic diets shall be prescribed by the medical practitioner responsible for the care of the resident. Each resident's diet order shall be documented in the resident's clinical record. There shall be a procedure for the accurate transmittal of dietary orders to the dietary service and informing the dietary service when the resident does not receive the ordered diet or is unable to consume the diet with action taken as appropriate.

1. The nursing home shall maintain a current list of residents identified by name, room number and diet order and such identification shall accompany each resident's meal when it is served.

2. A current therapeutic diet manual, approved by a registered dietitian, shall be readily available to attending physicians, nursing staff and dietetic service personnel and shall be the guide used for ordering and serving diets.

C. Each resident shall receive and the nursing home shall provide:

1. at least three meals daily, at regular times comparable to normal mealtimes in the community;

2. food prepared by methods that conserve nutritive value, flavor, and appearance;

3. food that is palatable, attractive and at the proper temperature;

4. food prepared in a form designed to meet individual needs; and

5. substitutes offered of similar nutritional value to residents who refuse food or beverages served.

D. A list of all menu substitutions shall be kept for 30 days.

E. There shall be no more than 14 hours between a substantial evening meal and breakfast the following day. A substantial evening meal is defined as an offering of three or more menu items at one time, one of which includes a high-quality protein such as meat, fish, eggs, or cheese.

F. There shall be no more than 16 hours between a substantial evening meal and breakfast the following day when a nourishing snack is offered at bedtime. A nourishing snack is defined as a verbal offering of items, single or in combination, from the basic food groups.

G. Bedtime nourishments shall be offered nightly to all residents, unless contraindicated by the resident's medical practitioner as documented in the resident's clinical record.

H. If residents require assistance in eating, food shall be maintained at appropriate serving temperatures until assistance is provided. Feeder trays shall be delivered at the time staff is immediately available for feeding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9821. Equipment and Supplies

A. Special eating equipment and utensils shall be provided for residents who need them. At least a one-week supply of staple food with a three-day supply of perishable food conforming to the approved menu shall be maintained on the premises. Food purchase records reflecting the kind and amount of food purchased shall be maintained for one year.

B. An approved lavatory shall be convenient and properly equipped for dietary services staff use. Effective with the promulgation of these requirements, an additional lavatory shall be provided in the dishwasher area in newly constructed nursing homes or in existing nursing homes undergoing major dietary alterations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9823. Sanitary Conditions

A. All food shall be procured, stored, prepared, distributed, and served under sanitary conditions to prevent food borne illness. This includes keeping all readily perishable food and drink at or below 41° F, except when being prepared and served.

B. Refrigerator temperatures shall be maintained at 41° F or below; freezers at 0° F or below.

C. Hot foods shall leave the kitchen or steam table at or above 140° F, and cold foods at or below 41° F.

D. In-room delivery temperatures shall be maintained at 120° F or above for hot foods and 55° F or below for cold items.

E. Food shall be transported to residents' rooms in a manner that protects it from contamination while maintaining required temperatures.

F. Refrigerated food which has been opened from its original package shall be covered, labeled and dated.

G. All food shall be procured from sources that comply with all laws and regulations related to food and food labeling.

H. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.

I. All equipment and utensils used in the preparation and serving of food shall be properly cleansed, sanitized and stored. This includes:

1. maintaining a water temperature in dish-washing machines at 140° F during the wash cycle (or according to the manufacturer's specifications or instructions) and 180° F for the final rinse; or

2. maintaining water temperature in low temperature machines at 120° F (or according to the manufacturer's specification or instructions) with 50 ppm (parts per million) of hypochlorite (household bleach) on dish surfaces; or

3. maintaining a wash water temperature of 75° F for manual washing in a three-compartment sink, with 25 ppm of hypochlorite or equivalent, or 12.5 ppm of iodine in the final

rinse water; or a hot water immersion at 170° F for at least 30 seconds shall be maintained.

J. Dietary staff shall not store personal items within the food preparation and storage areas.

K. The kitchen shall not be used for dining of residents or personnel.

L. Dietary staff shall use good hygienic practices.

M. Dietary employees engaged in the handling, preparation and serving of food shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

N. Staff with communicable diseases or infected skin lesions shall not have contact with food if that contact will transmit the disease.

O. There shall be no use of tobacco products in the dietary department.

P. Toxic items such as insecticides, detergents, polishes and the like shall be properly stored, labeled and used.

Q. Garbage and refuse shall be kept in durable, easily cleanable, insect and rodent-proof containers that do not leak and do not absorb liquids.

1. Containers used in food preparation and utensil washing areas shall be kept covered when meal preparation is completed and when full.

2. Containers used in disposing of paper towels after hand washing shall be so designed as to prevent recontamination of the hands.

R. All ice intended for human consumption shall be free of visible trash and sediment.

1. Ice used for cooling stored food and food containers shall not be used for human consumption.

2. Ice stored in machines outside the kitchen shall be protected from contamination.

3. Ice scoops shall be stored in a manner so as to protect them from becoming soiled or contaminated between usage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter D. Pharmaceutical Services

§9825. General Requirements

A. The nursing home shall provide emergency drugs and biologicals to its residents from an emergency kit licensed by the Louisiana Board of Pharmacy and shall provide routine and emergency drugs and biologicals, ordered by a licensed practitioner, from a licensed pharmacy. Whether drugs and biologicals are obtained from the emergency kit(s) or from a community or institutional pharmacy permitted by the Louisiana Board of Pharmacy, the nursing home is responsible for ensuring the timely availability of such drugs and biologicals for its residents and that pharmaceutical services are provided in accordance with accepted professional standards and all appropriate federal, state and local laws and regulations.

B. The most current edition of drug reference materials shall be available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9827. Consultant

A. If the nursing home does not employ a licensed pharmacist, it shall have a designated consultant pharmacist that provides services in accordance with accepted pharmacy principles and standards. The minimum consultation time shall not be less than one hour per quarter which shall not include drug regimen review activities.

B. There shall be documentation to support that the consultation time was given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9829. Labeling

A. All drug and biological containers shall be properly labeled, including the following:

1. resident's name;
2. authorized prescriber's name;
3. prescription number;
4. drug name and strength;
5. directions for use, as indicated;
6. expiration date;
7. cautionary auxiliary labels, if applicable;
8. pharmacist's last name and initial;
9. date dispensed;
10. name, address and telephone number of issuing pharmacy.

B. The label on prepackaged (unit dose) containers shall contain the following information:

1. drug name and strength;
2. dosage form;
3. quantity;
4. name of manufacturer and/or distributor;
5. date of preparation;
6. pharmacist's last name and initial;
7. expiration date.

C. Over-the-counter (nonprescription) drugs and biologicals, except stock drugs, shall be plainly labeled with the resident's name, drug name and strength and any additional information in accordance with the nursing home's policies and procedures. The manufacturer's labeling information shall be present in the absence of prescription labeling.

D. The nursing home shall develop procedures to assure proper labeling for medications provided a resident for a temporary absence.

E. The nursing home shall have a procedure for the proper identification and labeling of medication brought into the nursing home from an outside source.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9831. Storage

A. All drugs and biologicals shall be stored in a locked area/cabinet and kept at proper temperatures and lighting. The medicine room or medication preparation area shall have an operable sink with hot and cold water, paper towels and either bar soap or soap dispenser.

B. Access to drug storage areas shall be limited to licensed nursing personnel and the consultant pharmacist as authorized in the nursing home's policy and procedure manual. Any unlicensed, unauthorized individual (e.g., housekeepers, maintenance personnel, etc.) needing access to drug storage areas shall be under the direct visual supervision of licensed authorized personnel.

C. Medication requiring refrigeration shall be kept separate from foods in separate containers within a refrigerator and stored at a temperature range of 36 to 46° F.

1. Laboratory solutions or materials awaiting laboratory pickup shall not be stored in refrigerators with food and/or medication.

2. Medication for external use only shall be stored separate from other medication and food.

D. Separately locked, permanently affixed compartments shall be provided for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse.

E. Medications of each resident shall be kept and stored in their originally received containers and transferring between containers is forbidden.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9833. Disposition

A. Prescription and over-the-counter (OTC) drugs and biologicals are the property of the resident.

1. If a drug or biological is discontinued, the resident is discharged/deceased, or the resident is transferred to another facility, the resident or his/her responsible party has the right to determine its disposition.

2. If no determination is made by the resident/responsible party, the nursing home shall destroy on the premises of the nursing home the drugs or biologicals within 90 days.

3. Controlled drugs shall not be released or sent with a resident upon transfer or discharge, except on the written order of the attending physician.

B. If the resident/responsible party elects to receive the drugs or biologicals, documentation containing the name and the amount of the drug or biological to be received shall be completed and signed by the resident or responsible party and facility representative acknowledging their receipt. This document shall be placed in the resident's clinical record.

C. Expired medication shall not be available for resident or staff use. They shall be destroyed on-site by nursing home personnel no later than 90 days from their expiration/discontinuation date utilizing the following methods.

1. Controlled drugs shall be destroyed on-site by a licensed pharmacist after receiving DEA authorization to do

so on a continuing basis, and witnessed by a state or local law enforcement officer or other licensed nursing home individual, such as RN, LPN or MD. All controlled substances to be destroyed shall be inventoried and listed on a DEA Form 41, a copy of which shall be maintained on the premises and a copy mailed to the Louisiana Board of Pharmacy. These drugs shall also be listed on the resident's individual accumulative drug destruction record.

2. For noncontrolled drugs, there shall be documentation of the resident's name; name, strength and quantity of the drug destroyed; prescription number; method and date of destruction; signatures of at least two individuals (which shall be either licensed nurses who are employees of the nursing home, or the consultant pharmacist) witnessing the destruction. Medications of residents transferred to a hospital may be retained until the resident's return. Upon the resident's return, the physician's order shall dictate whether or not the resident is to continue the same drug regimen as previously ordered. Medications not reordered by the physician shall be destroyed, using the procedures outlined above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9835. Administration

A. Drugs and biologicals shall not be administered to residents unless ordered by a practitioner (i.e., physician, dentist, or doctor of osteopathy) duly licensed to prescribe drugs. Such orders shall be in writing over the practitioner's signature. Drugs and biologicals shall be administered only by medical personnel or licensed nurses.

B. Drugs and biologicals shall be administered as soon as possible after doses are prepared, not to exceed two hours. They shall be administered by the same person who prepared the doses for administration, except under unit dose package distribution systems.

C. An individual resident may self-administer drugs if permissible by the nursing home's policy and procedure and a professional team has determined that this practice is safe. The team shall also determine who will be responsible for storage and documentation of the administration of drugs. The resident's care plan shall reflect approval to self-administer medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9837. Drug Regimen Review

The drug regimen of each resident shall be reviewed as often as dictated by the resident's condition. Irregularities shall be reported in writing to the resident's physician and director of nursing, and these reports shall be acted upon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9839. Emergency Medication Kit

A. If an emergency medication kit is used in the nursing home, a permit shall be obtained and maintained in accordance with the Louisiana Board of Pharmacy.

B. A separate permit is required for each emergency medication kit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9841. Medication Record Keeping

A. General Records

1. Each resident shall have a medication administration record (MAR) on which the dose of each drug or biological administered shall be properly recorded by the person administering the drug or biological to include:

- a. name, strength and dosage of the medication;
- b. method of administration to include site, if applicable;
- c. time of administration; and
- d. the initials of persons administering the medication along with a legend of the initials.

2. Medication errors and drug reactions shall be reported immediately to the resident's attending physician by a licensed nurse and an entry made in the resident's record.

3. Medications not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the nursing home's written policy and procedures. The attending physician shall be notified of an automatic stop order prior to the last dose so that s/he may decide if the administration of the medication is to be continued or altered.

B. Controlled Drugs

1. The nursing home shall establish a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate accounting of all controlled drugs received, administered and destroyed or otherwise disposed. Only licensed medical personnel shall be allowed to receive and sign for delivery of controlled drugs.

2. Control records of schedule II drugs shall be maintained. The individual resident records shall list each type and strength of drug and the following information:

- a. date;
- b. time administered;
- c. name of resident;
- d. dose;
- e. physician's name;
- f. signature of person administering the dose; and
- g. the balance on hand.

C. Noncontrolled Drugs. Records of noncontrolled medication destruction shall be maintained in the resident's clinical record and shall include the following:

1. resident's name;
2. name, strength and quantity of the medication;
3. prescription number;
4. method and date of destruction;
5. signatures of at least two individuals (which shall be either licensed nurses, who are employees of the nursing

home, or the consultant pharmacist) witnessing the destruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter E. Activity Services

§9843. Activities Program

A. A nursing home shall provide for an ongoing program of diverse and meaningful activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident.

B. An individualized program of activities shall be developed for each resident based upon their specific needs and interests.

C. The activities program encourages each resident's voluntary participation and choice of activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9845. Activity Service Personnel

The activities program shall be directed by a resident activities director. The resident activities director shall be responsible to the administrator or his/her designee for administration and organization of the activities program. There shall be sufficient supportive personnel to meet the activity needs of all residents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9847. Equipment and Supplies

There shall be a variety of supplies and equipment based upon established needs and interests of the residents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter F. Social Services

§9849. Scope of Service

A nursing home shall provide medically-related social services to promote the highest level of functioning and well-being of each resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9851. Social Service Personnel

An employee of the facility shall be designated as responsible for social services. The social service designee shall be full time in nursing homes with more than 120 beds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter G. Rehabilitation Services

§9853. Delivery of Service

A. If the nursing home provides a range of rehabilitation services, including but not limited to physical therapy, speech-language pathology, occupational therapy and mental health rehabilitative services, the services shall be delivered to promote the highest level of functioning and well-being of each resident.

B. These services, when provided in the nursing home, shall be delivered in a safe and accessible area. Rehabilitation services shall be provided under the written order of the resident's attending physician. These services shall be provided by appropriately credentialed individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9855. Record Keeping

The rehabilitation service is based upon an initial assessment established by the appropriate therapist. A written rehabilitation plan of care shall be developed. The resident's progress is recorded by the therapist at the time of each visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter H. Resident Clinical Records

§9857. General Provisions

The nursing home shall maintain clinical records on each resident in accordance with accepted professional standards and practices. Each resident's clinical record shall be complete, accurately documented, readily accessible and systematically organized to facilitate retrieving and compiling information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9859. Maintenance of Records

A. The overall supervisory responsibility for the resident record service shall be assigned to a responsible employee of the facility.

B. All entries in the clinical record shall be either typewritten or legibly written in ink, dated and signed.

C. If electronic signatures are used, the nursing home shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of any computer generated signature.

D. If a facsimile communications system (FAX) is used, the nursing home shall take precautions when thermal paper is used to ensure that a legible copy is retained as long as the clinical record is retained.

E. A nursing home record may be kept in any written, photographic, microfilm, or other similar method or may be kept by any magnetic, electronic, optical, or similar form of data compilation which is approved for such use by the department.

F. No magnetic, electronic, optical, or similar method

shall be approved unless it provides reasonable safeguards against erasure or alteration.

G. A nursing home may, at its discretion, cause any nursing home record or part to be microfilmed, or similarly reproduced, in order to accomplish efficient storage and preservation of nursing home records.

H. Upon an oral or written request, the nursing home shall give the resident or his/her legal representative access to all records pertaining to himself/herself including current clinical records within 24 hours excluding weekends and holidays. After receipt of his/her records for inspection, the nursing home shall provide upon request and two working days notice, at a cost not to exceed the community standard, photocopies of the records or any portions of them.

I. The nursing home shall ensure that all clinical records are completed within 90 days of discharge, transfer or death. All information pertaining to a resident's stay is centralized in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9861. Content

A. The clinical record contains sufficient information to identify the resident clearly, to justify the diagnosis and treatment, and to document the results accurately.

B. As a minimum, each clinical record shall contain:

1. sufficient information to identify the resident;
2. physician orders;
3. progress notes by all practitioners and professional personnel providing services to the resident;
4. a record of the resident's assessments;
5. the plan of care;
6. entries describing treatments and services provided;
7. reports of all diagnostic tests and procedures; and
8. physician's discharge summary or death note.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9863. Confidentiality

The nursing home shall safeguard clinical record information against loss, destruction or unauthorized use. The nursing home shall ensure the confidentiality of resident records, including information in a computerized record system, except when release is required by transfer to another health care institution, law, third-party payment contract, or the resident. Information from or copies of records may be released only to authorized individuals, and the nursing home must ensure that unauthorized individuals cannot gain access to or alter resident records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9865. Retention

A. Clinical records shall be retained for a minimum of 10 years following a resident's discharge or death. Unless the

records are pertinent to a case in litigation in which instance they shall be retained indefinitely or until the litigation is resolved.

B. A nursing home which is closing shall notify the department in writing at least 14 days prior to cessation of operation of their plan for the disposition of residents' clinical records for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Chapter 99. Nursing Homes

Subchapter A. Physical Environment

§9901. General Provisions

The nursing home shall be designed, constructed, equipped and maintained to protect the health and safety of residents, personnel and the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9903. Nurses' Station

A. Each floor of a multistory nursing home shall have a nurses' station.

B. Each nurse's station shall be provided with a sink, soap, paper towel dispenser, working space and accommodations for recording and charting purposes by nursing home staff with storage space for in-house resident records.

C. The nurses' station shall be equipped to audibly receive resident calls electronically through a call system from resident rooms and toilet and bathing facilities. There shall be a medicine preparation room or area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9905. Resident Rooms

A. Resident bedrooms shall be designed and equipped for adequate nursing care, comfort, and privacy of residents. Each resident bedroom shall have a smooth floor, walls, ceilings in good repair and so finished as to enable satisfactory cleaning.

B. Each resident's bedroom shall have a floor at or above grade level, accommodate no more than four residents, have a minimum width of not less than 10 feet, have a ceiling height of at least 7 feet, have electrical outlets in accordance with the National Electrical Code, have direct access to an exit corridor and be so situated that passage through another resident's bedroom is unnecessary.

C. A ceiling height of at least 8 feet shall be provided in nursing homes or additions to nursing homes that are licensed subsequent to September 20, 1996.

D. Private resident bedrooms shall measure at least 100 square feet of bedroom area.

E. Multiple resident bedrooms shall measure at least 80 square feet of bedroom area for each resident.

F. There shall be at least 3 feet between the sides and foot of the bed and any wall, other fixed obstruction, or other bed, unless the furniture arrangement is the resident's preference and does not interfere with service delivery. In nursing homes or additions to nursing homes that are licensed subsequent to September 20, 1996, there shall be at least 4 feet between the sides and foot of the bed and any wall, other fixed obstruction, or other bed, unless the furniture arrangement is the resident's preference and does not interfere with service delivery.

G. Each resident's bedroom shall have at least one window opening to the outside atmosphere. Windows with sills less than 30 inches from the floor shall be provided with guard rails.

H. Each resident's bedroom window shall be provided with shades, curtains, drapes or blinds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9907. Resident Room Furnishings

A. Each resident shall be provided with an individual bed of proper size and height for the convenience of the resident and equipped with:

1. a clean spring in good repair;
2. a clean, comfortable, well-constructed mattress at least 5 inches thick with waterproof ticking and correct size to fit the bed;
3. a clean comfortable pillow shall be provided for each bed with extra pillows available to meet the needs of the residents;
4. adequate bed rails when necessary to meet the needs of the resident; and
5. sheets and covers appropriate to the weather and climate.

B. Screens or noncombustible ceiling suspended privacy curtains which extend around the bed shall be provided for each bed in multiresident bedrooms to assure resident privacy. Nursing homes or additions to nursing homes initially licensed after September 20, 1996 shall have ceiling suspended curtains in multiresident rooms which extend around the bed to provide total visual privacy without obstructing the passage of other residents either to the corridor, closet, lavatory or adjacent toilet room nor fully encapsulating the bedroom window.

C. The nurses' call system cords, buttons or other communication mechanisms shall be placed where they are within reach of each resident.

D. Each resident shall be provided with a bedside table, at least two drawers and an enclosed hanging space for clothing that is accessible to the resident. As appropriate to resident needs or desire, each resident shall have a comfortable chair with armrests, waste receptacle, and access to a towel rack and mirror.

E. Each resident who has tray service to their room shall be provided with an adjustable overbed table positioned so that the resident can eat comfortably.

F. Each resident shall be provided with a bedside light capable of being operated from the bed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9909. Locked Units

A. Nursing homes providing locked units must develop admission criteria. There must be documentation in the resident's record to indicate the unit is the least restrictive environment possible and placement in the unit is needed to facilitate the resident achieving his/her highest possible functional level. Seclusion rooms are not allowed.

B. Guidelines for admission shall be provided to either the resident, his/her family, and/or his/her legal guardian.

C. Locked units are designed and staffed to provide the care and services necessary for the residents to achieve and maintain his/her highest functional level.

D. There must be at least two facility personnel in a locked unit at all times.

E. The locked unit resident has the right to exercise his or her rights which are not compromised as a result of admission to the unit.

F. Care plans shall address the reasons for the resident being in the unit and how the facility is meeting the resident's needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9911. Toilet, Hand-Washing and Bathing Facilities

A. Each floor occupied by residents shall be provided with a toilet, lavatory, and bathtub, whirlpool or shower.

B. Each bedroom shall be equipped with or conveniently located near adequate toilet and bathing facilities appropriate in number, size, and design to meet the needs of residents.

C. In nursing homes built prior to August 26, 1958, the following ratio shall be provided (whenever calculations include any fraction of a fixture, the next higher whole number of fixtures shall be installed):

- | | |
|--------------------------|-----------|
| 1. Lavatories | 1:10 beds |
| 2. Toilets | 1:10 beds |
| 3. Showers or tubs | 1:15 beds |
| 4. Whirlpools (optional) | 1:20 beds |

D. In nursing homes built subsequent to August 26, 1958, the following ratio shall be provided (whenever calculations include any fraction of a fixture, the next higher whole number of fixtures shall be installed):

- | | |
|--------------------------|---|
| 1. Lavatories | 1:bedroom or immediately adjacent thereto |
| 2. Toilets | 1:8 beds |
| 3. Showers or tubs | 1:10 beds |
| 4. Whirlpools (optional) | 1:20 beds |

E. Bathrooms shall be easily accessible, conveniently located, well lighted and ventilated to the outside atmosphere. Doors to bathrooms and toilet rooms used by residents shall be at least 2 feet 8 inches wide. The fixtures shall be of substantial construction, in good repair, and of such design to enable satisfactory cleaning.

F. Tub and shower bath bottoms shall be of nonslip material. Grab bars shall be provided to prevent falling and

to assist in getting in and out of the tub or shower.

G. Separate toilet and lavatory facilities for use by employees shall be provided. Separate bathtubs, whirlpools or showers shall be provided for employees who live on the premises.

H. Lights must be controlled by wall switches, which must be so placed that they cannot be reached from the bathtub, whirlpool or shower.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9913. Dining and Resident Activities

A. The nursing home shall provide one or more areas designated for resident dining and activities.

B. The dining room(s) or area(s) shall seat not less than 50 percent of the licensed capacity of the nursing home at one seating. No smoking shall be allowed in these areas during meal times.

C. There shall be sufficient space and equipment to comfortably accommodate the residents who participate in group and individual activities. These areas shall be well lighted and ventilated and be adequately furnished to accommodate all activities.

D. Areas used for corridor traffic or for storage of equipment shall not be considered as areas for dining or activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9915. Linen and Laundry

A. The nursing home shall have available at all times a quantity of linen essential for proper care and comfort of residents.

B. Linen shall be free from rips and tears.

C. All used linen shall be bagged or enclosed in appropriate containers for transportation to the laundry.

D. Soiled linen storage areas shall be ventilated to the outside atmosphere.

E. Linen from residents with a communicable disease shall be bagged, in readily identifiable containers distinguishable from other laundry, at the location where it was used.

F. Linen soiled with blood or body fluids shall be placed and transported in bags that prevent leakage.

G. If hot water is used, linen shall be washed with detergent in water at least 160° F for 25 minutes. If low-temperature (less than or equal to 158° F) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

H. Provisions shall be made for laundering personal clothing of residents.

I. Clean linen shall be transported in covered containers and stored in a manner to prevent its contamination.

J. Nursing homes providing in-house laundry services initially licensed after September 20, 1996 shall have a laundry designed to eliminate crossing of soiled and clean linen. It shall be so located that soiled linens are not carried through the same doorway used to transport clean linen.

K. There shall be hand-washing facilities for employees in the laundry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9917. Equipment and Supplies

A. The nursing home shall maintain all essential mechanical, electrical, and resident care equipment in safe operating condition.

B. Therapeutic, diagnostic and other resident care equipment shall be maintained and serviced in accordance with the manufacturer's recommendations.

C. All residents, when appropriate because of diagnoses, shall be provided with a water pitcher, drinking glass, self-draining soap dish, towels, washcloths, emesis basin, wash basin, bedpan and/or urinal.

D. Wheelchairs shall be available for temporary use by residents who are not fully ambulatory.

E. Equipment for taking vital signs shall be maintained.

F. At least one oxygen tank shall be readily accessible for emergency use.

G. An adequate number of battery-generated lamps or flashlights shall be available for staff use in case of electric power failure.

H. There shall be at least one telephone at a height accessible to chairbound residents, available for resident use where calls can be made without being overheard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9919. Other Environmental Conditions

A. The nursing home shall provide a safe, clean, orderly, homelike environment free from offensive odors.

B. The minimum resident capacity of a nursing home shall be 150 square feet gross area per resident. Bedroom square footage per bed is a part of this gross area.

C. There shall be a well-lighted and ventilated living/community room with sufficient furniture.

D. There shall be a clean utility room designed for proper storage of nursing equipment and supplies.

E. There shall be a separate soiled utility room designed for proper cleansing, disinfecting and sterilizing of equipment and supplies. As a minimum, it shall contain equipment to satisfactorily clean resident care equipment, a clinic service sink and provisions for the storage of cleaning supplies (e.g., mops and pails) and chemical supplies.

F. A hard surfaced off-the-road parking area to provide parking for one car per five licensed beds shall be provided. This requirement is minimum and may be exceeded by local ordinances. Where this requirement would impose an unreasonable hardship, a written request for a lesser amount may be submitted to the department for waiver consideration.

G. The nursing home shall be provided with an adequate supply of safe potable water even when there is a loss of normal water supply. Service from a public water supply must be used if available. Private water supplies, if used, must meet the requirements of the State Sanitary Code.

H. An adequate supply of hot water shall be provided which shall be adequate for general cleaning, washing and sterilizing of cooking and food service dishes and other utensils, and for bathing and laundry use. Hot water supply to the hand-washing and bathing faucets in the resident areas shall have automatic control to assure a temperature of not less than 100° F nor more than 120° F at the faucet outlet.

I. The nursing home shall be connected to the public sewerage system if such a system is available. Where a public sewerage is not available, the sewage disposal system shall conform to the requirements of the State Sanitary Code.

J. There shall be a comfortable sound level maintained based on the needs of the nursing home residents.

K. All plumbing shall be properly maintained and conform to the requirements of the State Sanitary Code.

L. There shall be at least one toilet room for employees and the public.

M. There shall be adequate outside ventilation by means of window or mechanical ventilation, or a combination of the two.

N. All openings to the outside atmosphere shall be effectively screened. Entrance doors equipped with closers in air-conditioned buildings need not have screens.

O. Each room used by residents shall be capable of being heated to not less than 71° F in the coldest weather and capable of being cooled to not more than 81° F in the warmest weather. Deviations from this temperature range shall be permissible in resident bedrooms only through written documentation by the resident or sponsor, as long as it does not infringe upon the comfort of a roommate.

P. Lighting levels in all areas shall be adequate to support task performance by staff personnel and independent functioning of residents. A minimum of 6 to 10 foot-candles over the entire stairway, corridors, and resident rooms measured at an elevation of 30 inches above the floor and a minimum of 20 to 30 foot-candles over areas used for reading or close work shall be available.

Q. Corridors used by residents shall be equipped on each side with firmly secured handrails, affixed to the wall.

R. There shall be an effective pest control program so that the nursing home is free of pest and rodent infestation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Subchapter B. Infection Control and Sanitation

§9921. Organization

A nursing home shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9923. Infection Control Program

A. An infection control committee shall be established consisting of the medical director and representatives from at

least administration, nursing, dietary, and housekeeping personnel.

B. The committee shall establish policies and procedures for investigating, controlling and preventing infections in the nursing home, and monitor staff performance to ensure proper execution of policies and procedures.

C. The committee shall approve and implement written policies and procedures for the collection, storage, handling, and disposal of medical waste.

D. The committee shall meet at least quarterly, documenting the content of its meetings.

E. Reportable diseases as expressed in the Sanitary Code shall be reported to the local parish health unit of the Office of Public Health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9925. Employee Health Policies and Procedures

A. Nursing home employees with a communicable disease or infected skin lesions shall be prohibited from direct contact with residents or their food, if direct contact will transmit the disease.

B. The nursing home shall require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice. The nursing home shall follow the Centers for Disease Control's *Guideline for Handwashing and Hospital Environmental Control, 1985* for hand washing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9927. Isolation

When the infection control program determines that a resident needs isolation to prevent the spread of infection, the nursing home shall isolate the resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9929. Housekeeping

There shall be sufficient housekeeping personnel to maintain a safe, clean and orderly interior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9931. Nursing Care Equipment

A. Bedpans, urinals, emesis basins, wash basins and other personal nursing items shall be thoroughly cleaned after each use and sanitized as necessary. Water pitchers, when provided, shall be sanitized as necessary.

B. All catheters, irrigation sets, drainage tubes or other supplies or equipment for internal use and as identified by the manufacturer as one-time use only will not be autoclave or otherwise disinfected or sterilized and shall be used only one time and discarded.

C. Disposable syringes used for feeding purposes shall be disposed of in accordance with the manufacture's recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

§9933. Waste and Hazardous Materials Management

The nursing home shall have a written and implemented waste management program that identifies and controls wastes and hazardous materials. The program shall comply with all applicable laws and regulations governing wastes and hazardous materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing will be held on this matter at 9:30 a.m. Wednesday, August 21, 1996, 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 following the public hearing.

Bobby P. Jindal
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nursing Home Minimum Licensure Standards

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that implementation of this proposed rule will increase program costs by approximately \$4,000 for SFY 1997 but no costs are anticipated for SFY 1998 and for SFY 1999.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this rule won't impact federal revenue collections for any year as no federal funding is available for state licensure functions.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect on competition and employment.

Thomas D. Collins
Director
9606#044

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Vaccines for Children

The Department of Health and Hospitals, Bureau of Health Services Financing, is proposing to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 Section 13631 created the Pediatric Vaccine Distribution Program (known as the Vaccines for Children Program) which became effective October 1, 1994. OBRA 1993 added a new Section 1928 to the Social Security Act which requires that states establish a program for the purchase and distribution of pediatric vaccines to providers qualified under and registered with the program for the purpose of immunizing children eligible under the act. One of the federally mandated groups of children who are entitled to receive immunizations without charge for the cost of vaccines to their parents/guardians are Medicaid eligible children. Therefore, the Medicaid Program is required to reimburse qualified and registered providers for the administration of the immunizations to Medicaid eligible children. The U.S. Health and Human Services' Center for Disease Control and the Office of Public Health within the Department of Health and Hospitals are responsible for the distribution of these vaccines to private providers who are registered and qualified under the federal requirements to receive and administer these vaccines. At this time the Office of Public Health is distributing these vaccines to its public health units, federally qualified health centers as well as to private providers.

An emergency rule was initially adopted on the Vaccines for Children Program on January 20, 1995 (*Louisiana Register*, Volume 21, Number 1) and re-adopted in May and September 1995 (*Louisiana Register*, Volume 21, Numbers 5 and 9) and in January and May 1996 (*Louisiana Register*, Volume 22, Numbers 1 and 5). This emergency rule was adopted to implement and continue the program in order to comply with federal law. The following proposed rule will provide for the rule under the Administrative Procedure Act.

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing establishes policy for Medicaid reimbursement of Vaccines for Children Program services whereby the bureau will reimburse qualified and registered providers for only the administration of the pediatric vaccines. This program has been instituted through a phase-in process to allow for the distribution of these vaccines on a statewide basis to both public and private providers. Initial distribution was only to the Office of Public Health Units and Federally Qualified Health Centers; however, private providers have now been phased into the program. The Medicaid Program will no longer pay for the pediatric vaccines, only the administration of such vaccines, effective for dates of service

April 1, 1996 and after. The following provisions govern the reimbursement of administration of pediatric vaccines under the Vaccines for Children Program.

1. A qualified and registered provider must:
 - a. be a licensed health care provider who has authority under Louisiana state law to administer pediatric vaccines;
 - b. be an enrolled Medicaid provider and an enrolled Vaccines for Children Program provider; and
 - c. not have been found by the Health Care Financing Administration or the State of Louisiana to have violated a provider agreement or other applicable requirements.
2. Medicaid reimbursement for the administration cost of the pediatric vaccines is \$9.45 for the first year and this rate may be inflated by the Medical—All Items line of the Consumer Price Index for each of the succeeding two years, and:
 - a. is provided only for Medicaid eligible children; and
 - b. shall be made only for the administration of vaccines in accordance with the immunization schedule adopted by the National Academy of Pediatrics as required by the KIDMED Program under the Medicaid Program.
3. There is no Medicaid reimbursement for the vaccines obtained through the Vaccines for Children Program.
4. The pediatric vaccines included under the Medicaid Vaccines for Children's Program include the following:
 - a. DTaP—Diphtheria, Tetanus and acellular Pertussis;
 - b. DTP—Diphtheria, Tetanus, Pertussis;
 - c. MMR—Measles, Mumps and Rubella;
 - d. Poliovirus;
 - e. Hep B—Hepatitis B;
 - f. HIB—Hemophilus Influenza B;
 - g. DT—Diphtheria and Tetanus;
 - h. DTP—HIB combination vaccine.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding the proposed rule. A public hearing on this proposed rule is scheduled for Wednesday, July 24, 1996 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the day following the public hearing.

Bobby Jindal
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Vaccines for Children

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

It is anticipated that implementation of this proposed rule will result in decreased state expenditures for the provision of vaccines to Medicaid-eligible children by approximately \$1,583,190 for SFY 1995-1996; \$4,944,464 for SFY 1996-1997; and \$5,142,236 for SFY 1997-1998.

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

It is anticipated that federal revenue collections for the provision of vaccines will decrease by approximately \$1,150,188 for SFY 1995-1996; \$3,592,153 for SFY 1996-1997; and \$3,696,753 for SFY 1997-1998.

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

It is anticipated that the physician providers of vaccines to Medicaid-eligible children will experience the state expenditure decreases shown above.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9606#042

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Labor
Office of Workers' Compensation**

Compliance Penalty (LAC 40:I.109)

Under the authority of the Workers' Compensation Act, particularly R.S. 23:1021 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Labor, Office of Workers' Compensation hereby gives notice that rulemaking procedures have been initiated to amend the Office of Workers' Compensation Rules, LAC 40:I.109 of Chapter 1, Compliance Penalty.

The change to this rule will delete LAC 40:I.109.B in Chapter 1, Compliance Penalty, pertaining to the authority of the director to hold an investigatory hearing in order to determine whether or not a penalty may be imposed. The change is technical in nature and will in no way change the way the current hearing and appeals process operates.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Chapter 1. General Provisions

§109. Compliance Penalty

- A. ...
- B. Repealed.
- C. ...

(Editor's Note: The existing text in Subsection C will move to Subsection B.)

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

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 22:221 (March 1996), amended LR 22:

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than July 20, 1996, at 4:15 p.m. to Judge Glynn F. Voisin, Assistant Secretary of Labor, Office of Workers' Compensation, Box 94040, Baton Rouge, LA

70804-9040 or 1001 North Twenty-third Street, Baton Rouge, LA 70802 or to fax number (504) 342-5665.

Glynn F. Voisin
Assistant Secretary

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

RULE TITLE: Fraud (LAC 40:I.1905)

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

There are no costs or savings accruing to state or local governmental units as a result of this change in the current rule.

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

There will be no effect on revenue collections of state and local governmental units as a result of the change in the current rule.

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

The change in the current rule will continue to allow the rule to facilitate the administration of the Office of Workers' Compensation in fulfilling its various functions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The change in the current rule will continue to facilitate the administration of the Office of Workers' Compensation and as such will not directly affect employment or competition.

Glynn F. Voisin
Assistant Secretary
9606#013

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Labor
Office of Workers' Compensation**

Forms (LAC 40:I.105)

Under the authority of the Workers' Compensation Act, particularly R.S. 23:1021 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Labor, Office of Workers' Compensation hereby gives notice that rulemaking procedures have been initiated to amend the Office of Workers' Compensation Rules, LAC 40:I.105.

The change to these rules will require employers to complete the required Form LDOL-WC-1017A, Employers Report of Occupational Injury and Illness Quarterly Summary. The amendment will also list those employers which may be exempt from the requirements listed in the amendment.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Chapter 1. General Provisions

§105. Forms

A. The following forms are prescribed for use as required by the Workers' Compensation Act and these rules:

- 1. - 4. ...

5.a. Form LDOL-WC-1017A, Employer's Report of Occupational Injury and Illness Quarterly Summary, shall be filed with the Office of Workers' Compensation by the last day of the first month of the succeeding quarter by all employers with 11 or more employees at any one time in the prior calendar year.

b. The following employers are exempt from the requirements of §105.A.5.a (also identified by their Standard Industrial Classification Codes [SIC Codes]):

- i. Agricultural Production (SIC 01)
 - ii. Agricultural Services (SIC 07)
 - iii. Automotive dealers and gasoline service stations (SIC 55)
 - iv. Apparel and accessory stores (SIC 56)
 - v. Furniture, home furnishings, and equipment stores (SIC 57)
 - vi. Eating and drinking places (SIC 58)
 - vii. Miscellaneous retail (SIC 59)
 - viii. Banking (SIC 60)
 - ix. Credit agencies other than banks (SIC 61)
 - x. Security, commodity brokers, and services (SIC 62)
 - xi. Insurance (SIC 63)
 - xii. Insurance agents, brokers, and services (SIC 64)
 - xiii. Real estate (SIC 65)
 - xiv. Holding and other investment offices (SIC 67)
 - xv. Personal services (SIC 72)
 - xvi. Business services (SIC 73)
 - xvii. Motion pictures (SIC 78)
 - xviii. Legal services (SIC 81)
 - xix. Educational services (SIC 82)
 - xx. Social services (SIC 83)
 - xxi. Museums, botanical, and zoological gardens (SIC 84)
 - xxii. Membership organizations (SIC 86)
 - xxiii. Engineering, Accounting, Research and Management (SIC 87)
 - xxiv. Private households (SIC 88)
 - xxv. Miscellaneous services (SIC 89)
 - xxvi. Offices and Clinics of Doctors of Medicine (SIC 8011)
 - xxvii. Offices and Clinics of Dentists (SIC 8021)
 - xxviii. Offices and Clinics of Doctors of Osteopathy (SIC 8031)
 - xxix. Offices and Clinics of Chiropractors (SIC 8041)
 - xxx. Offices and Clinics of Optometrists (SIC 8042)
 - xxxi. Offices and Clinics of Podiatrists (SIC 8043)
 - xxxii. Offices and Clinics of Health Practicioners, Not Elsewhere Classified (SIC 8049)
 - xxxiii. Medical Laboratories (SIC 8071)
 - xxxiv. Dental Laboratories (SIC 8072)
 - xxxv. Home Health Care Services (SIC 8082)
 - xxxvi. Kidney Dialysis Centers (SIC 8092)
 - xxxvii. Specialty Outpatient Facilities, Not Elsewhere Classified (SIC 8093)
 - xxxviii. Health and Allied Services, Not Elsewhere Classified (SIC 8099)
- c. Failure to file this form as required may be penalized pursuant to LAC 40:I.109.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1021.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 11:776 (August, 1985), repealed and repromulgated by the Department of Employment and Training, LR 17:358 (April, 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 22:221 (March 1996), LR 22:

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than July 20, 1996, at 4:15 p.m. to Judge Glynn F. Voisin, Assistant Secretary of Labor, Office of Workers' Compensation, Box 94040, Baton Rouge, LA 70804-9040 or 1001 North Twenty-third Street, Baton Rouge, LA 70802 or to fax number (504) 342-5665.

Glynn F. Voisin
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Forms (L AC 40:I.105)**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs or savings accruing to state or local governmental units as a result of implementing these rules.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is a potential increase in revenue collection of the Office of Workers' Compensation as a result of penalties to be paid by parties failing to comply with the rules and regulations of the Office of Workers' Compensation. It is not possible to estimate the scope of these revenues at this time.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
These rules facilitate the administration of the Office of Workers' Compensation in fulfilling its various functions. The rules will benefit the public and more particularly insurers and self-insurers by encouraging others similarly situated to comply with the rules and regulations thus reducing the cost of administering the system.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
These rules are designed to facilitate the administration of the Office of Workers' Compensation and as such will not directly affect employment or competition.

Glynn F. Voisin
Assistant Secretary
9606#014

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Labor
Office of Workers' Compensation**

Fraud Penalty; Hearing; Appeal (LAC 40:I.1905)

Under the authority of the Workers' Compensation Act, particularly R.S. 23:1021 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950

et seq., the Department of Labor, Office of Workers' Compensation hereby gives notice that rulemaking procedures have been initiated to amend the Office of Workers' Compensation Rules, LAC 40:I.Chapter 19.

The change to this rule will seek to delete LAC 40:I.1905.B in Chapter 19, Fraud, pertaining to the authority of the director to hold an investigatory hearing in order to determine whether or not a penalty may be imposed. The change is technical in nature and will in no way change the way the current hearing and appeals process operates.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Chapter 19. Fraud

§1905. Penalty; Hearing; Appeal

- A. ...
- B. Repealed.
- C. - C.1. ...

(Editor's Note: The existing text in Subsection C will move to Subsection B.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1208 and 23:1291(1)(5).

HISTORICAL NOTE: Promulgated by the Department of Employment and Training, Office of Workers' Compensation, LR 17:359 (April, 1991), amended by the Department of Labor, Office of Workers' Compensation, LR 22:223 (March 1996), amended LR 22:

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than July 20, 1996, at 4:15 p.m. to Judge Glynn F. Voisin, Assistant Secretary of Labor, Office of Workers' Compensation, Box 94040, Baton Rouge, LA 70804-9040 or 1001 North Twenty-third Street, Baton Rouge, LA 70802 or to fax number (504) 342-5665.

Glynn F. Voisin
Assistant Secretary

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

RULE TITLE: Fraud (LAC 40:I.1905)

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

There are no costs or savings accruing to state or local governmental units as a result of this change in the current rule.

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

There will be no effect on revenue collections of state and local governmental units as a result of the change in the current rule.

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

The change in the current rule will continue to allow the rule to facilitate the administration of the Office of Workers' Compensation in fulfilling its various functions.

V. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The change in the current rule will continue to facilitate the

administration of the Office of Workers' Compensation and as such will not directly affect employment or competition.

Glynn F. Voisin
Assistant Secretary
9606#009

Richard W. England
Assistant to the Legislative
Fiscal Officer

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of State Police**

Concealed Handgun Permit (LAC 55:I.Chapter 13)

The Department of Public Safety and Corrections, Office of State Police, Concealed Handgun Permit Section, in compliance with and under authority of R.S. 49:950 et seq., and R.S. 33:4862.1 et seq., hereby gives notice of its intent to amend, in their entirety, the rules and regulations pertaining to the issuance of concealed handgun permits and the regulation of concealed handgun applicants and permittees as outlined below:

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 13. Issuance of Concealed Handgun Permits

§1301. Statement of Department Policy

A. The rules contained herein are promulgated by the Concealed Handgun Permit Section of the Department of Public Safety and Corrections, Office of State Police in order to set forth the policies and procedures applicable to the issuance of concealed handgun permits to Louisiana citizens who qualify for such permits pursuant to R.S. 40:1379.1(I), 40:1379.3, 40:1381, and 40:1382, and the issuance of special officer commissions; to provide statewide uniform standards for issuing permits to carry concealed handguns; and to maintain the health, welfare, and safety of the public. These considerations shall control the application and interpretation of these rules. Any subsequent restatement, repeal, or amendment of these rules shall be in accordance with the aforementioned considerations.

B. - I.6 Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 1:495 (November 1975), amended by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§1303. Issuance of Special Officer's Commission

A. - C. ...

D. Application. The superintendent of state police shall be authorized to issue at his discretion a special officer's commission from the Office of State Police. All requirements of the superintendent of state police, relating to application shall be satisfied. Applications shall be submitted in the manner prescribed by the superintendent of state police and will include the submission of such documents and materials

establishing eligibility as the superintendent may deem necessary.

E. ...

F. Termination. Special officer commissions will automatically expire one year from the date of issue or as otherwise provided by law.

G. Qualifications and Requirements. The following requirements must be met before a special officer's commission will be issued, all applicants:

1. Must submit a letter which details the need for statewide police power and the power to arrest. If the applicant is employed and the nature of the employment is the basis for need of a special officer's commission, then, in addition to his letter, a detailed letter from the employer stating the need is necessary;

2. - 4. ...

5. Show proof of faithful service bond in the minimum amount of \$10,000; and

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 1:495 (November 1975), amended by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§1305. Definitions

For the purposes of these rules, the following words and phrases shall mean:

Addiction—the habitual use of alcoholic beverages or any controlled dangerous substance as defined in R.S. 40:961 and 40:964.

Applicant—a person who has completed and submitted an application to the department seeking a concealed handgun permit.

Application—the forms and schedules prescribed by the department upon which an applicant seeks a permit or the renewal thereof. Application also includes information, disclosure statements, releases, certificates or any other form required by the department in the application process.

Citizen—any person legally residing in Louisiana and who has been a resident for six months or longer immediately preceding the filing of an application for a concealed handgun permit.

Commitment—any voluntary or involuntary admission into a mental health facility or institution.

Concealed Handgun—any handgun as defined in R.S. 40:1379.3(J)(1), which is carried on or about a person in such a manner as to hide or obscure the handgun from plain view.

Department—Department of Public Safety and Corrections, Office of State Police.

Deputy Secretary—the deputy secretary of the Department of Public Safety and Corrections who serves as the superintendent of the Office of State Police.

Fugitive from Justice—a person who flees, evades, or escapes from any jurisdiction to avoid arrest, prosecution, or imprisonment for any criminal offense, which shall include outstanding traffic attachments or warrants, or to avoid giving testimony in any criminal proceeding.

Illegal Alien—any person without legal authority to enter or remain in the United States and who is not legally residing

within the United States or any territory or possession of the United States.

Machine Gun—any firearm which shoots or is designed to shoot more than one round without reloading and by a single function of the trigger.

Mentally Deficient—having been determined by either a formal judicial interdiction proceeding in any court or a coroner's commitment that a person is incompetent or incapable of taking care of his own person or affairs.

Permit—the authorization issued by the deputy secretary of the Department of Public Safety and Corrections pursuant to R.S. 40:1379.1(I), 40:1379.3, 40:1381, 40:1382 and these rules, which shall be valid for four years from the date of issuance unless revoked, suspended, or otherwise invalidated, and shall contain a permit number, date of expiration, type of handgun authorized to be carried, and the name, address, date of birth, physical description, and photograph of the permittee.

N.R.A.—National Rifle Association.

Permittee—an individual who meets the qualifications as described in R.S. 40:1379.3 and these rules and to whom a concealed handgun permit has been issued.

Pistol—a handgun that has a short barrel and can be held, aimed, and fired with one hand and is capable of only firing a single round each time the trigger is pulled, which includes semi-automatic handguns.

Revolver—a pistol that has a rotating cylinder containing a number of firing chambers. The action of the trigger or hammer will line up a chamber with the barrel and firing pin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§ 1307. Applications and Permits

A. Request for Application Materials. A person who wishes to obtain application materials in order to apply for a permit may submit a completed "Request for Application To Carry A Concealed Handgun" (form DPSSP 4644) to the department.

B. Initial Applications

1. All applications for a permit shall be submitted on forms provided by the department and mailed to:

Louisiana State Police
Concealed Handgun Permit Section
P. O. Box 66375
Baton Rouge, LA 70896

2. All applicants shall provide all additional information requested by the department within 10 business days of receipt of the request, unless an extension is granted by the department. If any applicant fails to provide all additional information requested by the department, the application shall be considered incomplete and will not be processed until completed.

3. All applicants shall submit with their application one color passport photograph that meets the following specifications:

- a. photograph taken within 60 days of submission of application;
- b. full frontal view photograph of the applicant including his head and hair;

c. sunglasses, hats, or caps may not be worn while taking photograph; and

d. the rear of the photograph must be signed and dated by the employee of the law enforcement agency where the applicant's fingerprints are taken.

4. All applicants shall submit with their application a complete, legible, and classifiable FBI applicant fingerprint card taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints.

5.a. For purpose of proof that the applicant has resided within this state for at least six months prior to his application for a permit, the applicant shall submit with his application a photocopy of his valid Louisiana driver's license or Louisiana identification card. In the event the applicant does not possess a valid Louisiana driver's license or a Louisiana identification card, proof of residency must be established by any one of the following:

i. United States passport;

ii. Louisiana voter registration card;

iii. a utility bill, phone bill, proof of mortgage or rent payments in the name of the applicant which establishes a Louisiana permanent address of the applicant; or

iv. any other documentation which adequately satisfies proof of compliance with the qualifications for residing within this state six months prior to applying for a concealed handgun permit.

b. For purposes of proof of residency, a business address or post office box shall not suffice.

6. For purposes of proof that the applicant is at least 21 years of age, a photocopy of his valid Louisiana driver's license or Louisiana identification card which contains the applicant's date of birth shall suffice. In the event the applicant does not possess a valid Louisiana driver's license or Louisiana identification card, the applicant shall submit with his application a certified true copy of his birth certificate.

7. All application forms are to contain a properly notarized oath wherein the applicant swears that:

a. the information contained therein is true and correct;

b. the applicant has read the applicable law and these rules, and any other informational materials supplied by the department that pertain to concealed handgun permits;

c. the applicant agrees to comply with these rules and the law; and

d. the applicant understands that any omission or falsification of any information required in the application could subject the applicant to criminal penalties.

8. All applications shall contain the permittee's home and daytime telephone number and a permanent mailing address for receipt of correspondence and service of documents by the department.

9. All applications submitted to the department shall contain a completed handgun training form provided by the department, which certifies that the applicant has completed an approved handgun training and safety course which includes instruction in child access prevention, and one of the following:

a. a photocopy of an honorable discharge from military service;

b. a photocopy of a certificate of completion of an approved handgun training and safety course or class which includes instruction in child access prevention;

c. an affidavit from the instructor, school, club, organization, or group that conducted or taught the department approved handgun training and safety course or class which includes instruction in child access prevention attesting to the completion of the course or class by the applicant.

10. All applications shall include a properly executed affidavit, provided by the department, whereby the applicant agrees in writing to hold harmless and indemnify the department, the state or any peace officer for any and all liability arising out of the issuance or use of the concealed handgun permit.

11. Incomplete applications, including failure to pay fees, may result in a delay or denial of a permit application.

12. The applicant or permittee shall notify the department, in writing, of any change of address, name, phone number, or other information required in the application, including the effective date of the change, within 30 days of the effective date of the change.

13. Any false statement or improper notarization contained in any report, disclosure, application, permit form, or any other document required by the department shall be a violation of these rules and may be cause for denial, suspension, or revocation of the permit.

14. All applications shall be submitted with a certified check or money order for the application or renewal fee as provided in R.S. 40:1379.3(15). An application is not complete unless it is submitted with the appropriate fee, is signed by the applicant, and contains all information required by the department.

15. All applicants shall submit with the application a non-refundable \$100 fee in the form of a certified check or money order. All applicants who have not continuously resided within the state of Louisiana for the 15 years preceding the submission of the application shall enclose an additional non-refundable \$50 fee.

C. Qualifications to Receive a Permit. To qualify for a concealed handgun permit, a citizen shall:

1. be a resident of the state and have been a resident for six months or longer immediately preceding the filing of the application;

2. be 21 years of age or older;

3. not suffer from a mental infirmity due to disease, illness, or retardation which prevents the safe handling of a handgun;

4. not be ineligible to possess a firearm by virtue of having been convicted of a felony;

5. not have been committed, either voluntarily or involuntarily, to any institution for the abuse of a controlled dangerous substance as defined by R.S. 40:961 and 40:964 or been found guilty of, or entered a plea of guilty or nolo contendere to a misdemeanor under the laws of this state or similar laws of any other state relating to a controlled dangerous substance within a five year period immediately preceding the date on which the application is submitted, or be

presently charged under indictment or a bill of information for such an offense;

6. not chronically and habitually use alcoholic beverages to the extent that his normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages to the extent that his normal faculties are impaired if, within the five year period immediately preceding the date on which the application is submitted, the applicant has been found guilty of, or entered a plea of guilty or nolo contendere to operating a vehicle while intoxicated, or have been committed, either voluntarily or involuntarily, for treatment as an alcoholic;

7. not have entered a plea of guilty or nolo contendere to or been found guilty of a crime of violence as defined in R.S. 14:2 at the misdemeanor level, unless five years have elapsed since completion of sentence or any other conditions set by the court have been fulfilled, or unless the conviction was set aside and the prosecution dismissed, prior to the date on which the application is submitted;

8. not have been convicted of, have entered a plea of guilty or nolo contendere to, or not be charged under indictment, or a bill of information for any crime of violence or any crime punishable by imprisonment for a term of one year or greater. A conviction, plea of guilty, or plea of nolo contendere under this Paragraph shall include a dismissal and conviction set aside under the provisions of Code of Criminal Procedure, Article 893;

9. not be a fugitive from justice;

10. not be an unlawful user of, or addicted to, marijuana, depressants, stimulants, or narcotic drugs;

11. not have been adjudicated to be mentally deficient or been committed to a mental institution;

12. not be an illegal alien in the United States; and

13. not have been discharged from the Armed Forces of the United States with a discharge characterized as "Under Other than Honorable Conditions", a "Bad Conduct Discharge", or a "Dishonorable Discharge". In the case of Commissioned Officers and Warrant Officers of the United States Armed Forces, the punishment of "Dismissal" rendered subject to a verdict of "guilty" at a trial by military court-martial is deemed to be disqualifying under this paragraph. For the purposes of this paragraph, the United States Coast Guard is considered an armed force.

D. Renewal of Permits

1. A permittee wishing to renew his concealed handgun permit shall file a renewal application no more than 120 days and no less than 90 days prior to the expiration of the permit. All renewal applications shall include a new photograph of the applicant as specified in LAC 55:1.1307.B.3.

2. A renewal application shall be considered filed with the department when it is completed and submitted with the appropriate fee, is signed by the applicant, contains all information required by the department, and is date stamped received by the department or is postmarked no more than 120 days and no less than 90 days prior to the expiration of the permit.

3. An incomplete renewal application will be not be considered filed and will be rejected.

4. Each permittee applying for a renewal of his permit

shall complete at least nine hours of additional educational training within one year prior to submitting a renewal application, which instruction shall include:

a. one hour of instruction on handgun nomenclature and safe handling procedures for a revolver and a semi-automatic pistol;

b. one hour of instruction on ammunition knowledge and fundamentals of pistol shooting;

c. one hour of instruction on handgun shooting positions;

d. three hours of instruction on the use of deadly force which shall include a review of R.S. 14:18 through 14:22 and which may include a review of any other laws relating to use of deadly force;

e. one hour of instruction on child access prevention; and

f. two hours of actual live range fire and proper handgun cleaning procedures:

i. live range fire shall include 12 rounds each at 6 feet, 10 feet and 15 feet for a total of 36 rounds;

ii. each applicant or permittee must perform at least one safe reload of the handgun at each distance;

iii. each applicant or permittee must score 100 percent hits within the silhouette portion of a N.R.A. B-27 type silhouette target with at least 36 rounds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§1309. Permits

A. The securing of a permit required by R.S. 40:1379.3 and these rules shall be a prerequisite for carrying a concealed handgun.

B. A permit shall grant statewide authority to a permittee to carry and conceal on his person, in the manner prescribed by law and these rules, a handgun of the type denoted on the permit. A permit shall grant a permittee only the authority to carry a concealed handgun as a private citizen and grants no special authority to any citizen awarded such a permit.

C. An applicant for a concealed handgun permit has the burden of proving by clear and convincing evidence that he is qualified to receive a permit and accepts the risk of adverse public notice, embarrassment, criticism or other action or loss that may result from action with respect to an application and expressly waives any claim for damages as a result thereof, except relating to willful misconduct by the department.

D. Failure to meet and maintain the qualification requirements as required by law and these rules, shall result in the denial, suspension, or revocation of a concealed handgun permit.

E. A permittee shall retain and carry his permit on his person when actually carrying and concealing a handgun and shall immediately produce his permit upon request of any law enforcement officer. Anyone who violates this Section shall be fined not more than \$100.

F. No concealed handgun permit shall be valid or entitle any permittee to carry a concealed handgun in any facility, building, location, zone, or area in which firearms are banned by local, state, or federal law.

G. No concealed handgun permit issued pursuant hereto shall authorize or entitle a permittee to carry a concealed handgun in any of the following:

1. a law enforcement office, station, or building;
2. a detention facility, prison, or jail;
3. a courthouse or courtroom, provided that a judge may carry such a weapon in his own courtroom;
4. a polling place;
5. a meeting place of the governing authority of a political subdivision;
6. the state capitol building;
7. any portion of an airport facility where the carrying of firearms is prohibited under federal law, except that no person shall be prohibited from carrying any legal firearm into the terminal, if the firearm is encased for shipment, for the purpose of checking such firearm as lawful baggage;
8. any church, synagogue, mosque or other similar place of worship;
9. a parade or demonstration for which a permit is issued by a governmental entity;
10. any portion of the permitted area of an establishment that has been granted a Class A-General retail permit, as defined in Part II of Chapter I or Part II of Chapter 2 of Title 26 of the Louisiana Revised Statutes of 1950, to sell alcoholic beverages for consumption on the premises;
11. any school "firearm-free zone" as defined in R.S. 14:95.6;
12. any private residence of another person, unless the permittee first receives the permission of that person; and
13. any other property or premises where access by those possessing a concealed handgun is restricted by the property owner, lessee or lawful custodian.

H. Any permit issued pursuant hereto shall automatically become invalid for any of the following reasons:

1. the permit is altered in any manner;
2. the permit is lost or stolen;
3. the permittee is carrying it while under the influence of alcoholic beverages or a controlled dangerous substance; or
4. the permittee ceases to reside within this state.

I. Any permit issued by the deputy secretary of the Department of Public Safety and Corrections shall be deemed to be the property of the department and shall be surrendered and returned to the department upon suspension, revocation or expiration, or when the permittee ceases to reside in the state.

J. The following shall be mandatory grounds for revocation of a permit by the deputy secretary:

1. the permittee fails to satisfy or maintain any one of the qualification requirements enumerated in the law or these rules;
2. the permittee violates the provisions of R.S. 40:1379.3(I) or R.S. 40:1382.

K. An otherwise lawful permit shall be considered automatically suspended and not valid while the permittee is under the influence of alcoholic beverages or a controlled dangerous substance. For purposes of these rules and the applicable law, a permittee shall be considered under the influence as evidenced by a blood alcohol reading of .05 grams percent or greater by weight of alcohol in the blood, or when a blood test or urine test shows any confirmed presence

of a controlled dangerous substance as defined in R.S. 40:961 and 964.

L. The deputy secretary shall automatically suspend a permit for six months if a permittee fails to comply with the provisions of R.S. 40:1379.3(I)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§1311. Handgun Training Requirements

A. Upon application to the department for a permit, all applicants shall demonstrate competence with a handgun by any one of the following:

1. completion of any Department of Public Safety and Corrections approved firearms safety or training course which shall include at least a minimum of nine hours of instruction as detailed below:

- a. one hour of instruction on handgun nomenclature and safe handling procedures of a revolver and semi-automatic pistol;

- b. one hour of instruction on ammunition knowledge and fundamentals of pistol shooting;

- c. one hour of instruction on handgun shooting positions;

- d. three hours of instruction on the use of deadly force which will include a review of R.S. 14:18 through 14:22 and which may include a review of any other laws relating to the use of deadly force;

- e. one hour of instruction on child access prevention; and

- f. two hours of actual live range fire and proper handgun cleaning procedures:

- i. live range fire shall include 12 rounds each at 6 feet, 10 feet and 15 feet for a total of 36 rounds;

- ii. each applicant or permittee must perform at least one safe reload of the handgun at each distance;

- iii. each applicant or permittee must score 100% hits within the silhouette portion of a N.R.A. B-27 type silhouette target with at least 36 rounds.

2. completion of the N.R.A. personal protection course including instruction in child access prevention conducted by a N.R.A. certified instructor;

3. completion of the N.R.A. basic pistol shooting course including instruction in child access prevention conducted by a N.R.A. certified instructor;

4. completion of a firearms training course approved by the Louisiana State Board of Private Security Examiners, in accordance with R.S. 37:3284 et seq. including instruction in child access prevention;

5. possession of a current valid license or permit to carry a concealed handgun issued by a parish law enforcement officer;

6. completion of a law enforcement training academy program certified by the Council on Peace Officer Standards and Training (P.O.S.T.); or

7. proof of completion of small arms training while serving with the armed forces of The United States of America as described in R.S. 40:1379.3(D)(1).

B. No certification or completion from any firearms training course or class available to the public offered by a

law enforcement agency, college, or private or public institution or organization or firearm training school shall be accepted unless said course received prior approval from the department in accordance with R.S. 40:1379.3(D)(1)(c).

1. The provider of any course offered for the purpose of certification to obtain a concealed handgun permit must submit a detailed course syllabus and any course materials to the department in order for the department to evaluate said course for approval pursuant to R.S. 40:1379.3(D)(1)(c).

2. The course syllabus must include the name and address of the instructors and a certified true copy of the instructors' N.R.A. or P.O.S.T. instructor certification.

C. Any teaching or training required under this Part must be conducted by a current N.R.A. certified or P.O.S.T. certified instructor who has registered his name and certification with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§1313. Code of Conduct of Permittees

A. General Provisions

1. All permittees shall comply with all applicable federal, state, and local laws and regulations.

2. Any violation of R.S. 40:1379.1(I), 40:1379.3, 40:1381, or 40:1382 shall also constitute a violation of these rules.

3. Each permittee shall meet and maintain all qualifications necessary to possess a concealed handgun permit.

B. Duties and Responsibilities of the Permittee

1. A permittee shall retain and carry on his person his concealed handgun permit at all times he is actually carrying and concealing any handgun authorized by the permit and shall immediately produce his permit upon the request of any law enforcement officer. Anyone who violates this provision shall be fined not more than \$100.

2. A permittee armed with a handgun shall notify any police officer who approaches the permittee in an official manner or with an identified official purpose that he has a handgun on his person, submit to a pat down, and allow the officer to temporarily disarm him. Failure to comply with this provision shall result in a six-month automatic suspension of the permit.

3. A permittee is prohibited from carrying a concealed handgun on his person while under the influence of alcoholic beverages or a controlled dangerous substance as defined in R.S. 40:961 and R.S. 40:964. For purposes of these rules, a permittee shall be considered under the influence as evidenced by a blood alcohol reading of .05 grams percent or greater by weight of alcohol in the blood, or when a blood test or urine test shows any confirmed presence of a controlled dangerous substance as defined in R.S. 40:961 and 40:964. When a law enforcement officer is made aware that a permittee is carrying a concealed handgun and the officer has reasonable grounds to believe that the permittee is under the influence of either alcoholic beverages or a controlled dangerous substance as defined in R.S. 40:961 and 40:964, the law enforcement officer may take temporary possession of the handgun and require the permittee to submit to a department certified

chemical test. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered. Failure of the permittee to comply with the provisions of this Section, shall result in a six-month automatic suspension of the concealed handgun permit.

4. Each permittee shall notify the department in writing of any change of address, name, phone number, or other information required in any initial application, including the effective date of the change, within 30 days of the effective date of the change. Failure to comply with this provision may result in a fine of up to \$100 assessed by the department.

5. A permittee shall notify the department of any misdemeanor or felony arrest or issuance of any summons other than a minor traffic violation, but including all DWI arrests, in this state or any other jurisdiction, within 15 days of the arrest or issuance of the summons. Notice shall be sent via certified mail, return receipt requested and shall include the date of arrest or summons, the arresting or issuing agency, jurisdiction in which the arrest occurred, the specific offense charged, whether the offense is classified as a felony or misdemeanor, the results of any chemical test which may have been administered in conjunction with the arrest or summons, a copy of any citation or summons issued, and any other pertinent information regarding the arrest or summons. Failure to notify the department in accordance with this Section may result in a 90-day suspension of the permit.

6. When a permittee ceases to reside within this state, the permit automatically becomes invalid and the permittee shall return the concealed handgun permit to the department within five business days from the date he ceases to reside within this state.

7. A permittee shall immediately return the concealed handgun permit to the department upon automatic suspension or revocation of the permit. If the permit is under suspension, failure to immediately return the permit to the department shall be grounds for revocation.

8. A permittee shall immediately inform the department in writing via certified mail of any accident, injury or death involving any handgun which the permittee is entitled to carry. Failure to comply with this provision shall result in a ninety 90-day automatic suspension of the permit.

9. Upon death of any permittee, the permittee's estate representative shall notify the department and return the concealed handgun permit to the department.

10. Any permittee or applicant who is subject to any preliminary or permanent injunction in any family or domestic dispute, or any other protective order issued pursuant to law, shall notify the department of the caption of the suit including the suit or proceeding number, the date of the issuance of the injunction or court order, and provide a signed copy of the court's order within three days of the issuance of any such order. Upon the issuance of the injunction or court order, the permit shall be automatically suspended or the department shall cease processing an applicant's application pending final resolution of the domestic dispute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§1315. Appeal and Hearing Procedures

A. Notice of Permit Denial and Appeal Therefrom

1. An applicant who is denied a concealed handgun permit shall be notified in writing by the department. Such notice shall comply with R.S. 49:955(B). Upon receipt of such notice, the applicant shall have two options:

a. Option 1- Informal Review. The applicant shall have 10 business days to request an informal review of documentation and evidence provided by the applicant setting out reasons the denial should be considered improper. Should the applicant remain dissatisfied with the department's decision following this review process, the applicant may appeal this decision within 20 business days of receipt of the department's decision by requesting an administrative hearing. Any such hearing requested by an applicant shall be scheduled and conducted in accordance with the Administrative Procedure Act pursuant to R.S. 49:950 et seq.

b. Option 2 - Formal Appeal. The applicant may appeal the denial by the department in writing within 30 days of receipt of the department's decision by requesting an administrative hearing. Any such hearing requested by an applicant shall be scheduled and conducted in accordance with the Administrative Procedure Act pursuant to R.S. 49:950 et seq.

2. A request for an administrative hearing shall be made in writing and sent to the department via certified mail, return receipt requested. If no request for a hearing is timely made, the denial shall become final.

B. Notice of Suspension, Revocation or Fine

1. A permittee whose permit is revoked, suspended, or who is issued a fine shall be notified in writing by the department. Such notice shall be in compliance with R.S. 49:955(B), and the action shall be considered to be immediately in effect.

2. Upon receipt of such notice, the permittee shall have 10 business days to request, in writing, a review of the department's action. The permittee should provide the department with relevant information which might have some bearing on the department's action. The permittee should include any documents or other evidence he wishes the department to consider.

3. If the permittee is not satisfied with the outcome of the department's review, he may request judicial review pursuant to the Administrative Procedure Act, R.S. 49:964.

C. General Provisions

1. Upon receipt of a request for any review, the deputy secretary or his designee shall review the department's action considering the information submitted, and affirm, modify, or reverse the department's action. Written notice of the department's decision to affirm, modify or reverse the department's action shall be provided to the permittee.

2. Except as otherwise provided by these rules, any notice shall be served by certified mail, return receipt requested, to the permanent address that is provided in the application, or latest amendment thereto, on file with the department. If any incorrect or incomplete address has been supplied to the department by the applicant or permittee, such that service cannot be successfully completed, or the applicant

or permittee fails to accept properly addressed certified mail, notice shall be presumed to have been given.

3. No applicant or permittee shall be allowed to carry a concealed handgun while any such appeals or considerations are pending.

4. Any fine levied by the department which is adjudicated to a final judgment shall be paid within 15 calendar days of said judgment. Failure to pay such a fine shall result in suspension or revocation of the permit.

5. In cases of serious violations of the law or these rules, or in situations in which the law calls for automatic suspension or revocation, or violations which present a danger to the public health, safety or welfare, the department may provide notice by telephone or hand delivery. Such notice shall be promptly documented and confirmation in writing shall be provided to the permittee.

6. Any request for an administrative hearing shall be made in writing and sent to the department via certified mail, return receipt requested, and postmarked within the delays allowed by these rules. If no request for a hearing is timely made, the action and/or penalty shall become final.

7. Any pre-hearing discovery for the administrative hearing shall be conducted pursuant to R.S. 49:956.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:

§1317. Severability Clause

If any provision of these rules is declared invalid for any reason, that provision shall not affect the validity of the remaining rules or any other provision thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1379, 40:1381, and 40:1382.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 22:

A public hearing will be held on the proposed rules and regulations on July 25, 1996, to commence at 9 a.m., at the Louisiana State Police Training Academy Auditorium, 7901 Independence Boulevard, Baton Rouge, LA.

Interested persons may submit written comments to the following address: Office of State Police, Box 66375 Baton Rouge, LA, 70896. Lieutenant Michael Futch is the person responsible for responding to the inquiries regarding the proposed rules and regulations. Written comments will be accepted through the close of business, 4:30 p.m., on July 25, 1996.

Colonel William "Rut" Whittington
Deputy Secretary

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

RULE TITLE: Concealed Handgun Permit

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation costs of the proposed rules for fiscal year 1996-1997 total \$1,669,839 and cover a total of 11 positions and associated costs which are required to issue and regulate

concealed handgun permits in this state. The large one-time expenditure in acquisitions \$228,724 proposed for the 96/97 fiscal year includes the purchase of a computer system and hardware to produce the large number of permits to be issued and a computerized optical storage system. Additional acquisitions cover vehicles for commissioned personnel and office equipment. The future three-year expenditure will be \$625,000 for each year.

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

The estimated revenue increase to the state will be approximately \$4,000,000 in fiscal year 1996/1997. The future three-year revenue will be approximately \$500,000 for each year. Local governmental units will not be affected by the proposed action.

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

There will be no costs except those related to the training required to qualify for a permit and the cost to obtain the permit itself. Economic benefit can be expected for nongovernmental groups or persons offering the required training courses and there may be some increase in sales of handguns.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition among individuals offering the required training courses will increase due to the training requirements and perhaps among handgun dealers.

Colonel William "Rut" Whittington
Deputy Secretary
9606#004

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Revenue and Taxation Sales Tax Division

Alternate Filing Period (LAC 61:I.4351)

Under the authority of Revised Statute 47:306 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, proposes to amend LAC 61:I.4351 pertaining to the payment of tax, the filing of returns and the penalty for absorption of the tax.

This rule is being amended in order to inform the public of the procedures that must be used in order to request an alternate filing period method be used to file sales tax returns.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue and Taxation

Chapter 44. Sales and Use Tax Exemptions

§4351. Returns and Payment of Tax, Penalty for Absorption of Tax

A. General. All persons and dealers who are subject to the tax under this Chapter are expected and required to file a tax return monthly, unless otherwise provided, and to remit the amount of tax due to the secretary. Forms will be provided by the secretary, and although the forms are usually mailed to each dealer, failure to receive same will not relieve the dealer

of the necessity of filing and remitting the tax due currently. For the purpose of collecting and remitting to the state the tax imposed by this Chapter, the dealer is hereby declared to be the agent of the state.

1. After a dealer is properly registered for sales and use tax purposes, an identifying sales tax number is assigned to that dealer. The assignment of a regular sales tax number requires a dealer to file a monthly return and failure to do so will cause the secretary to send an estimated proposed assessment. For months when the dealer has no taxable sales or amounts to report, the return should be marked "no sales or taxable amounts", signed by the dealer and filed with the secretary. Monthly returns are required to be filed with the secretary on or before the 20th day of the month following the month in which the tax becomes effective.

2. The secretary, for good cause, may extend, for a period not to exceed 30 days, the time for making any returns required under the provisions of this Chapter. Failure of the dealer to abide by the agreement and file returns and remittances as required will result in an immediate cancellation of the extension agreement by the secretary.

3. The tax computed to be due by the dealer is payable at the time the return is due, and failure to do so will cause the secretary to issue a 10-day demand assessment. Failure to file the returns on or before the due date, will subject the dealer to delinquency charges, loss of vendor's compensation and other charges as provided by law. See R.S. 47:1519 for information on electronic funds transfers (EFT).

4. Gross proceeds from rentals or leases shall be reported on the appropriate line of the return, and the tax shall be paid with respect thereto, unless an exemption is specifically authorized and explained on the return. Rental and lease proceeds shall be reported on the 20th day of the month following the monthly or quarterly reporting period in which the proceeds were actually collected by the dealer, regardless of the period in which the lease or rental occurred.

5. The dealer is compensated for accounting for and remitting the tax levied by this Chapter at the rate established by R.S. 47:306. The amount of compensation is computed by multiplying the rate by the amount of tax due and deducting that amount from the total tax accounted for and payable to the secretary, before taking credit for taxes already paid to a wholesaler.

6. As stated under the regulation pertaining to R.S. 47:304, the dealer or seller is permitted and required to state and collect the tax separately from the price paid by the purchaser, and the absorption of said tax as defined in this section by any retailer, wholesaler, manufacturer or other supplier shall be punished by a fine of not more than \$2,000 or by imprisonment in the parish jail for not more than two years.

B. Exceptions. Not all dealers are required to file returns on a monthly basis.

1. Upon registration, all dealers are required to file monthly returns. After the dealer has operated for a few months, and it is determined that the amount of tax liability averages less than \$100 per month, the dealer will be notified and permitted to file quarterly returns. Application to file quarterly is not necessary as notification is automatic once a

determination is made by the secretary that such a filing procedure is in order. Quarterly returns should be filed on or before the 20th day of the first month of the next succeeding quarter. Irregular sales tax returns and use tax returns should be filed on or before the 20th day of the month following the month in which the tax becomes effective. The returns should be prepared in a manner that will enable the secretary to ascertain the correctness of the tax computed to be due. Accordingly, each line of the tax return should be completed, and all amounts not taxable should be identified.

2. A dealer may file returns using alternate filing periods. The method for filing shall be approved by the secretary before the method is used to file a return. If an alternate period filing method is approved for use, the number of short periods during a year must be greater than or equal to the number of long periods during that same year. At the beginning of each year the dealer must, after obtaining approval for the alternate period filing method, file with the secretary a calendar for the year showing the alternative filing periods for that year. Amendments to approved calendars must be submitted for approval prior to the affected periods. The taxpayer's account shall be reviewed to determine if the taxpayer has correctly filed returns, according to the calendar submitted at the beginning of the year. If the taxpayer does not follow the approved alternate filing method, the returns for the year under review shall be converted to a calendar month basis and the taxpayer's request to use an alternate period filing method for the subsequent year will be denied. Alternate period returns shall be filed on or before the 20th day following the close of the alternate filing period. Failure to file on or before the due date, will subject the dealer to delinquency charges, loss of vendor's compensation and other charges as prescribed by law.

C. Advance Sales Tax. The Louisiana sales tax law was amended in 1965, to require all manufacturers, wholesalers, jobbers, suppliers and brokers of tangible personal property to collect an advance payment of sales taxes on sales of all tangible personal property, and such payment is required only as a means of facilitating collection of the sales tax. Previously to this amendment, such sales of tangible personal property were considered exempt for taxation since under the statute, wholesale sales were not taxable. Accordingly, these new dealers were required to register with the secretary in order to collect and remit an advance sales tax from the sale of all tangible personal property made to retail dealers who resell the property to final users and consumers. The advance payment of the Louisiana sales tax is required upon all sales of tangible personal property to other dealers unless, specifically exempted by statute, or Form LGST-9 is obtained and kept on file by the dealer making the sale. Exemption certificate LGST-9 will only be recognized if the dealer making the purchase of tangible personal property states that the purchases are for resale or further processing by wholesale dealers and manufacturers. Those businesses purchasing property for resale that qualify as "wholesale dealers" can be exempted from the payment of the advance tax.

1. A *Wholesale Dealer* is defined as one where 50 percent or more of his sales do not constitute retail sales as defined in the sales tax law. Sales made in interstate

commerce (sales where property is delivered by the seller outside the state) do not constitute retail sales. R.S. 47:306 also provides exemptions for dealers in motor vehicles subject to license and title, lumber dealers, farm implement dealers and mobile, motorized self-propelled earth moving and construction equipment dealers. Sales made to industrial users and/or to contractors are also added towards the 50 percent criteria for qualification as a wholesale dealer.

2. Manufacturers, wholesalers, jobbers, suppliers and brokers of tangible personal property are required under this Section to report all sales made within the period of a calendar month or approved alternative filing period, and to remit the advance retail dealers' sales tax on their returns filed with the department. The department is not concerned with credit terms extended by manufacturers, wholesalers, jobbers, suppliers and brokers to their customers. The question of when the wholesaler should collect the advance sales tax is dependent upon the policy of the seller.

3. All dealers who have paid advance sales tax to a manufacturer, wholesaler, jobber, or supplier shall deduct from the total tax collected by them upon the retail sale of the commodity, the amount of advance sales tax paid, provided tax paid invoices evidencing the payments are retained by the dealer claiming the refund or credit. If the advance tax so paid during any reporting period amounts to more than the tax collected by him for that period, the excess so paid shall be reported on the return as a credit. Each such credit return shall be accounted for independently by the Department of Revenue and Taxation, and a refund shall be issued to the dealer for each such credit return. In no case may the credit be applied against the taxes due for any other period, unless the credit is applied under the direction of the secretary.

4. Manufacturers, wholesalers, jobbers, and suppliers collecting advance sales taxes are entitled to vendors' compensation at the rate established by R.S. 47:306. The amount of compensation is computed as a percentage of the taxes so collected and remitted to the secretary, provided the return and payment are timely filed.

5. Parishes, municipalities, school boards and other local governing bodies, except hereinafter set forth, which levy a sales tax are hereby prohibited from requiring manufacturers, wholesalers, jobbers or suppliers to collect such taxes in advance from dealers to whom they sell.

6. The parish, municipal, school board or other local governing bodies of the parish in which the state capitol is located, Caddo Parish or any other parish having a population in excess of 200,000 are authorized to require manufacturers, wholesalers, jobbers and suppliers to collect the taxes levied by them in advance from dealers to whom they sell provided the dealers and wholesalers, manufacturers, jobbers, and suppliers are domiciled in said parish. Such advance collections are shall be subject to the same laws, rules and regulations as are applicable to advance collections of state sales taxes; provided, however, that the taxes so collected shall be remitted to the parish, municipal, school board or other local governing authority imposing the tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:306.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, LR 13:107 (February 1987), LR 22:

A public hearing will be held on July 26, 1996, at 10 a.m. in the Department of Revenue and Taxation Building at 330 North Ardenwood Drive, Baton Rouge, LA. Interested parties are invited to attend and submit oral comments on the proposed regulation.

All interested parties are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than July 10, 1996, at 4:30 p.m., to Patricia Porter, Sales Tax Division, Department of Revenue and Taxation, Box 201, Baton Rouge, LA 70821-0201 or 330 North Ardenwood Drive, Baton Rouge, LA 70806.

John Neely Kennedy
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Alternate Filing Period**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no explicit increase in costs to implement this rule. The department will absorb any costs to implement the review of applications and the cost to review the accounts every year.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no significant increase or decrease in revenue collections of state or local governmental units as a result of this proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This proposed rule provides the companies who are allowed to file according to the alternate period, a savings of an undetermined amount because of the cost to convert their sales records to the monthly amounts necessary to file on a calendar month basis.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed rule will have no effect on competition or employment.

John Neely Kennedy
Secretary
9606#022

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Revenue and Taxation
Sales Tax Division**

Motion Picture Rental Exemption (LAC 61:I.4409)

Under the authority of Revised Statute 47:305.9 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, proposes to amend LAC 61:I.4409 pertaining to the exemption from tax of the rental of motion picture films.

The Department of Revenue has agreed with the theater operators and film distributors that certain contracts entered into by them are not rental agreements, but are joint ventures

or partnerships. The department is proposing changes in the rule dealing with the definition of "lease or rental" found in LAC 61:I.4301.7 to reflect this agreement. The department also wants to make reference to this change in LAC 61:I.4409 in order to ease research for the taxpayer.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue and Taxation**

**Chapter 44. Sales and Use Tax Exemptions
§4409. Motion Picture Film Rental**

A. R.S. 47:305.9 provides a very limited exemption to the operators of motion picture theaters wherein the amount paid by operators to distributing agencies for the use of film are specifically exempted from the sales and use taxes imposed by this Chapter. Note that film is the only item covered by the exemption. Distributing agencies and suppliers for motion picture theaters are required to collect taxes on any other supplies or materials furnished to operators. Theaters are required to collect the tax on admissions.

B. Any distributing agent who fails to collect the tax imposed by this Chapter because of the exemption provided in this Section must be able to identify the motion picture theater operators to whom films were furnished. Failure of the distribution agency to maintain a complete record of transactions for which no taxes were collected can result in the dealer being held responsible for the tax.

C. In some cases, agreements between film distributors and theater operators may not be leases or rentals. LAC 61:I.4301.7 defines lease or rental and provides exceptions to the definition of lease or rental.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.9.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, LR 13:107 (February 1987), amended LR 22:

A public hearing will be held on July 25, 1996, at 10 a.m., in the Department of Revenue and Taxation Building at 330 North Ardenwood Drive, Baton Rouge, LA. Interested persons are invited to attend and submit oral comments on the proposed amendment. The public hearing for this amendment will be held in conjunction with the public hearing for the amendment of LAC 61:I.4301 which deals with the same issue.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than July 10, 1996, at 4:30 p.m., to Patricia Porter, Sales Tax Division, Box 201, Baton Rouge, LA, 70821-0201 or to 330 North Ardenwood Drive, Baton Rouge, LA, 70806.

John Neely Kennedy
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Motion Picture Rental Exemption**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no increase in costs to implement this rule.

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

There will be no significant effect on revenue collections of state or local governmental units as a result of this proposed rule. The agreements between movie theater operators (exhibitors), distributors, and the department have been in effect for some time. Any effect on state or local governmental units has already been felt because the agreement has already been accepted. The amendment to the rule simply directs the public to the clarification of the agreements in LAC 61:I.4301.7 which has also been amended for this same reason.

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

This proposed rule provides direction to find the clarification of the agreements in the rules. Because the agreement between the department and the movie industry was placed into effect prior to the rule, the economic benefits of the agreement have already been felt.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will have no effect on competition or employment.

John Neely Kennedy
Secretary
9606#021

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Revenue and Taxation
Sales Tax Division**

Nonprofit Organization Exemption (LAC 61:I.4418)

Under the authority of Revised Statute 47:305.14 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, proposes to adopt LAC 61:I.4418 pertaining to the exemption from the tax for tangible personal property sold at, or admission charges for, events sponsored by certain nonprofit organizations.

This rule is being proposed in order to explain to the public the types of organizations that qualify for the exemption, the types of events that qualify, and the procedures that must be followed to receive the exemption.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue and Taxation**

Chapter 44. Sales and Use Tax Exemptions

**§4418. Nonprofit Organizations; Nature of Exemption;
Limitations; Qualifications**

A. General. Events sponsored by domestic, civic, educational, historical, charitable, fraternal, or religious organizations, which are nonprofit are exempt from the sales or use tax for these events, on the condition that the proceeds from these events, less applicable expenses, are used for the furtherance of the purpose for which the organization was formed.

1. This exemption applies to sales of tangible personal property, admission charges, outside gate admission charges, and parking fees.

2. The organization must apply for the exemption for each event and the application must be genuine. The application is form R-1048.

3. If the exemption is approved, the secretary will provide a certificate of exemption for the specific event.

4. If the secretary denies the exemption, the organization may appeal to the Louisiana Board of Tax Appeals.

5. An *event*, as referred to in the statute, means an occurrence of relatively short duration with a scheduled beginning and ending date and/or time.

6. The purchase of items to be sold at these events is not exempt from the advance sales tax. In order to receive a credit for the tax paid on items to be sold at one of these exempt events, the organization would register with the department as an irregular filer and then file a sales tax return taking a credit for the sales tax paid on the purchases for resale.

B. Exceptions. The statute is very specific as to the type of organizations and events that qualify for the exemptions. There are some exceptions that are referred to in the law.

1. If the event is intended to yield a profit to the promoter or to any individual contracted to provide services, or equipment, or both, for the event, the exemption shall not apply.

2. Nonprofit organizations are not exempt from sales or use taxes under this exemption, only from the collection of sales tax at certain events held by these organizations.

3. The statute does not offer an exemption from the sales and use taxes for regular commercial ventures such as, bookstores, restaurants, gift shops, commercial flea markets, and similar ventures that are operated by nonprofit organizations. The exemption applies to events that are not open on an ongoing basis.

4. Any organization which endorses any candidate for political office or is involved in political activities will not be eligible for the exemption.

5. The secretary may, at his discretion, recognize on-going activities, e.g. concession sales at schools, and allow the organization to file an annual exemption application for such activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.14.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 22:

A public hearing will be held on July 29, 1996, at 10 a.m., in Department of Revenue and Taxation Building at 330 North Ardenwood Drive, Baton Rouge, LA. Interested parties are invited to attend and submit oral comments on the proposed amendments.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than July 10, 1996, at 4:30 p.m., to Patricia Porter, Sales Tax Division, Department of Revenue and Taxation, Box 201, Baton Rouge, LA, 70821-0201, or 330 North Ardenwood, Baton Rouge, LA, 70806.

John Neely Kennedy
Secretary

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

RULE TITLE: Nonprofit Organization Exemption

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no increase in costs to implement this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no significant effect on revenue collections of state or local governmental units as a result of this proposed rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This proposed rule provides clarification to the organizations and the amount of costs or benefits to the organizations cannot be measured.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed rule will not affect competition or employment.

John Neely Kennedy
Secretary
9606#019

Richard England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Revenue and Taxation
Sales Tax Division**

Rental Exemption Definitions (LAC 61:I.4301)

Under the authority of Revised Statute 47:301(7) and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue and Taxation, Sales Tax Division, proposes to amend LAC 61:I.4301.7 pertaining to the definition of lease or rental.

The Department of Revenue and Taxation has determined along with exhibitors (motion picture theater owners) and motion picture distributors that certain contracts entered into by the parties do not fall under the definition of a lease or rental. These contracts have evolved over the years from agreements that simply charge an amount per day or showing for the use of the film, to contracts that specify many different conditions, such as, the number of times the film is shown, the amount charged to the patrons, and the type of facilities in which the film is to be shown. The proposed rule will not be specific to agreements between theater owners and distributors but will address any contract of this nature. A reference will be made in the LAC 61:I.4409 which is the rule dealing with the exemption for motion picture film rental.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue and Taxation**

Chapter 43. Sales and Use Tax

§4301. Definitions

* * *

1.-6. ...

7. *Lease or Rental*

a. General. The terms *lease or rental* as used in this Chapter have the commonly accepted meaning, that is, the granting of possession or use of tangible personal property by the owner thereof to another person for a consideration without the transfer of title to the property. Re-leases or sub-leases and re-rentals or sub-rentals are also considered as leases or rentals.

b. Exceptions. Some arrangements or agreements for the use of tangible personal property, whether specifically mentioned in the statute or implied by the nature of the agreement or arrangement, are not considered leases or rentals. The types arrangements or agreements that are not defined as leases or rentals are:

(i). the lease or rental for re-lease or re-rental of property to be used in connection with the operating, drilling, completion or reworking of oil, gas, sulphur or other mineral wells. The lease or rental for re-lease or re-rental of casing tools, pipe, drill pipe, tubing, compressors, tanks, pumps, power units and other drilling or related equipment qualifies for exclusion if the property is to be used for one of the specified purposes. The re-lease or re-rental to the ultimate user is not exempt.

(ii). the lease or rental of property with an operator. When the owner of the property exerts control over the property by the furnishing of an operator, he is in fact performing a service and not leasing or renting. As an example, the owners of various types of equipment such as boats, draglines, trucks, tractors or automobiles may furnish the equipment to the user complete with an operator. In this situation, the owner of the equipment is performing a service, even though the person paying the fee directs the specific use of the equipment. The owner, through furnishing the operator, has retained sufficient control over the property to remove it from the rented or leased category. The fact that a separate charge is made for the salary of the operator is immaterial. This is not to say that when the owner of the property furnishes advisory or engineering personnel, with or without charge, to the lessee that the agreement would not qualify as a lease or rental. For instance, the fact that a computer manufacturer furnished a full-time engineer, a full-time programmer and a full-time computer operator to an installation having its own programmers and operators would not change the nature of the lease covering the equipment. Similarly, an engineer or superintendent furnished with the equipment does not alter the rental charges for use of the equipment, if the owner would be unable to operate the equipment without personnel furnished by the lessee.

(iii). agreements, joint ventures, arrangements, or partnerships between exhibitors (movie theater operators) and film distributors that place significant restrictions on the use of the movies and on the proceeds from the use of the of the movies. For example, an agreement between an exhibitor and a film distributor that stipulates that the proceeds from the showing of the film are to be shared, but also specifies the amount to be charged to the movie patron, the number of and/or the time of showings or the types or sizes of the facilities where the film is shown would not qualify as a lease or rental because of the restrictions placed on the parties.

8.-21. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Division, LR 13:107 (February 1987), amended LR 21:957 (September 1995), LR 22:

A public hearing will be held on July 25, 1996, at 10 a.m. in the Department of Revenue and Taxation Building at 330 North Ardenwood Drive, Baton Rouge, LA. All interested persons are invited to attend and submit oral comments on this proposed regulation. This public hearing will be held in conjunction with the public hearing for LAC 61:I.4409 that deals with the same subject matter.

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted no later than July 10, 1996, at 4:30 p.m. to Patricia Porter, Sales Tax Division, Department of Revenue and Taxation, Box 201, Baton Rouge, LA 70821-0201 or to 330 North Ardenwood Drive, Baton Rouge, LA 70806.

John Neely Kennedy
Secretary

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

RULE TITLE: Rental Exemption Definitions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no increase in costs to implement this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no significant effect on revenue collections of state or local governmental units as a result of this proposed rule. The agreements are already being recognized, the rule is simply to clarify the law.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This proposed rule provides clarification to the industry and the amount of costs or benefits to the industry cannot be measured. The agreements are already being recognized and any amount of costs or benefits have already been felt.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed rule will have no effect on competition or employment.

John Neely Kennedy
Secretary
9606#020

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Electronic Benefits Transfer for AFDC
and Food Stamps (LAC 67:III.401)

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.

In accordance with the standards of approval detailed by the United States Departments of Agriculture and Health and Human Services, and pursuant to R.S. 46:450.1 which authorizes the agency to devise and pilot an electronic benefits transfer issuance system as an alternative to issuing both food stamps and certain cash benefits provided by public entitlement programs, the Office of Family Support has begun the process of implementation.

This rule authorizes the agency to conduct or test a model program before statewide expansion. The agency plans to begin a pilot of the system as early as December 1996. Once piloted and approved, EBT can only begin full implementation with authorization of concurrent resolution of the legislature, by appropriation or by legislative act. EBT will be the method for delivery of benefits replacing checks and food stamp authorization cards.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 1. General Administrative Procedures

Chapter 4. Electronics Benefits Issuance System

§401. Electronic Benefits Transfer (EBT)

A. The Office of Family Support intends to implement an electronic benefits system which will provide AFDC cash grants and/or Food Stamp Program benefits to eligible individuals and households. OFS will pilot the system in Natchitoches Parish prior to statewide implementation. EBT will be the method of delivery of AFDC and Food Stamp benefits in the pilot area and in each subsequent parish into which the system expands, subject only to such exceptions as shall be necessary for the effective functioning of the programs.

B. The EBT system will expand beyond the pilot parish in the following manner:

1. Phase 1 consists of the parishes of Avoyelles, Catahoula, Concordia, Grant, LaSalle, Rapides, Sabine, Winn, East and West Baton Rouge, East and West Feliciana, Livingston, St. Helena, and Tangipahoa.

2. Phase 2 includes Orleans (five district offices), West and East Jefferson, Plaquemines, St. Bernard, St. Tammany, Washington, Bienville, Bossier, Caddo, Claiborne, DeSoto, Lincoln, Red River, and Webster parishes.

3. Phase 3 consists of Ascension, Assumption, Iberville, Lafourche, St. Charles, St. James, St. John, St. Mary, Terrebonne, Evangeline, Iberia, Lafayette, Pointe Coupee, St. Landry, St. Martin, Vermilion, Acadia, Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis, Vernon, Caldwell, East and West Carroll, Franklin, Jackson, Madison, Morehouse, Ouachita, Richland, Tensas, and Union parishes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:450.1, 7 CFR 274.12 and 45 CFR 95(F).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 22:

Interested persons may submit written comments within 30 days to the following address: Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton

Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on July 30, 1996 in the second floor auditorium at 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 area code (504)342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Benefits Transfer for AFDC and
Food Stamps**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
State costs for the pilot and subsequent statewide implementation are: \$32,267 in FY 96/97; \$1,344,611 in 97/98 and \$1,106,094 in 98/99. Statewide implementation requires additional appropriations. Costs are subject to 50 percent reimbursement from the federal government. Since food stamp issuing offices will be phased out, there are estimated savings to local governmental units of \$5,207,890 in 97/98, the first year of full implementation, and \$7,635,032 in FY 98/99. These savings also include 50 percent in federal funds obtained by the state agency for local governments.
These costs are based on implementation of the pilot beginning December 1996. Should the pilot be implemented later in the fiscal year, the costs for each year prior to statewide implementation would be reduced accordingly.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Since costs will be reduced, there will be reductions in federal reimbursement for both state and local governments. FY 96/97 will yield an increased federal reimbursement of \$16,134 for the state but the reduced costs after EBT is fully implemented will result in a loss of reimbursements estimated to be \$629,667 in 97/98 and \$1,355,711 in 98/99. The reduction in collection of federal funds at the local government level will be \$2,603,945 in the first year and \$3,817,516 thereafter.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This program will be implemented at no cost to recipients.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
EBT contract procurement will be done through competitive bidding. Since the actual issuance of paper food stamps will end, an estimated 300 employees of local governmental units involved in that task will be displaced or reassigned.

Vera W. Blakes
Assistant Secretary
9606#034

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Office of Fisheries**

**Commercial Harvest of Southern Flounder
(LAC 76:VII.351)**

The Department of Wildlife and Fisheries does hereby give notice of intent to promulgate a rule (Title 76:VII.351) to place limits on the commercial harvest of southern flounder (*Paralichthys lethostigma*). These regulations are required to effectuate requirements of Act 1316 of the Regular Legislative Session. Authority for adoption of this rule is included in R.S. 56:317 and Act 1316 of the 1995 Regular Legislative Session, R.S. 56:325.4.

Title 76

**WILDLIFE AND FISHERIES
Part VII. Fish and Other Aquatic Life
Chapter 3. Saltwater Sport and Commercial Fishery
§351. Rules for Commercial Harvest of Southern
Flounder**

- A. Commercial Harvest with Pompano Strike Nets
1. The commercial harvest of southern flounder (*Paralichthys lethostigma*) in Louisiana waters by pompano strike nets is closed and will remain closed until May 1, 1997. No vessel possessing any pompano strike net shall have southern flounder (*Paralichthys lethostigma*) aboard the vessel, whether caught within or without the territorial waters of the state.
 2. Effective with the closure, the sale, barter, or exchange of, and the commercial possession of southern flounder (*Paralichthys lethostigma*) taken with strike nets shall be prohibited.
- B. Commercial Harvest with Commercial Gear Other Than Strike Nets
1. Other provisions of law notwithstanding, a properly licensed commercial vessel that contains legal commercial fishing gear, other than strike nets, may have on board up to a daily possession limit of 10 southern flounder (*Paralichthys lethostigma*) per person on board.
 2. Other provisions of law notwithstanding, a properly licensed commercial fisherman who is not on a vessel and who is using legal gear, other than strike nets, may possess up to a daily limit of 10 southern flounder (*Paralichthys lethostigma*). Southern flounder (*Paralichthys lethostigma*) legally possessed under this rule may be purchased, bartered, traded, exchanged or sold.
- C. Commercial Possession and Sale
1. Nothing shall prohibit the possession or sale of southern flounder (*Paralichthys lethostigma*) legally taken prior to the closure providing that all commercial dealers possessing southern flounder (*Paralichthys lethostigma*) taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.4.
 2. Effective with this rule, in addition to all records otherwise required by law, wholesale/retail dealers shall maintain records indicating the number and poundage of southern flounder (*Paralichthys lethostigma*) for each

transaction when southern flounder (*Paralichthys lethostigma*) are acquired, possessed or transferred.

3. Commercial dealers possessing southern flounder (*Paralichthys lethostigma*) legally imported into the state shall maintain appropriate records in accordance with other provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:317, Act 1316 of the 1995 Regular Legislative Session and 56:325.4.

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

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., August 2, 1996.

James H. Jenkins, Jr.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Commercial Harvest of Southern Flounder

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

No measurable costs or savings and no quantifiable increase or decrease in workload or paperwork to state or local governmental units is anticipated as a result of implementation of this rule.

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

No measurable effect on revenues to any state or local governmental units is anticipated from the proposed rule.

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

Rule is intended to allow enforcement of regulations required by Act 1316, 1995 Regular Legislative Session. Harvest of southern flounder with pompano strike nets would not be allowed, causing a loss of revenue to this segment of the fishery due to requirements of Act 1316. Harvest and sale of southern flounder by commercial fishermen using other legal gear would be limited to 10 fish per person per day aboard a commercial vessel, and 10 fish per day for commercial fishermen not aboard a vessel to allow effective enforcement of the required restrictions. This limit may cause losses of revenue and increase cost to various segments of the fishing industry, depending upon present harvest rates and the availability of southern flounder. Long-term economic benefits of an undetermined magnitude may also occur in both recreational and commercial sectors if the southern flounder stock is limited by parental stock spawning potential ratio. In that case, and if the proposed regulations provide increases in that ratio, then future benefits may be derived from increased recruitment of southern flounder to the recreational and commercial fisheries. The probability or dimensions of these possible changes can not be estimated at this time.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be little or no effect on competition or employment in the public sector. Some impacts on competition and employment may occur in the private sector due to reduced income, increased costs and the redirection of fishing effort to

other fisheries. Additionally, some offshore vessels that fish for extended periods of time (i.e. large shrimp trawlers) may be less likely to land their catch in the state, due to restrictions on the number of flounder they may possess or sell. Presently, no data is available to estimate the probability or dimensions of these changes on competition or employment.

Fredrick J. Prejean, Sr.
Undersecretary
9606#023

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Recreational Harvest of Southern Flounder (LAC 76:VII.353)

The Wildlife and Fisheries Commission does hereby give notice of intent to promulgate a rule (Title 76:VII.353) to place daily take and possession limits on the recreational harvest of Southern Flounder (*Paralichthys lethostigma*). Authority for adoption of this rule is included in R.S. 56:6(25)(a), 56:326.1 and 56:326.3.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery §353. Rules for Recreational Harvest of Southern Flounder

The daily take and possession limit for the recreational taking of Southern Flounder (*Paralichthys lethostigma*) caught within or without Louisiana waters shall be 10 fish per day and in possession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:326.1 and 56:326.3.

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

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., August 2, 1996.

Glynn Carver
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Recreational Harvest of Southern Flounder

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

No measurable costs or savings and no quantifiable increase or decrease in workload or paperwork to state or local governmental units is anticipated as a result of implementation of this rule.

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

No effect on revenues to any state or local governmental units is anticipated from the proposed rule.

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

Rule is intended to allow enforcement of regulations required by Act 1316, 1995 Regular Legislative Session. Data available at present indicates that anglers on trips that do not directly target southern flounder seldom exceed the proposed bag limit, so these anglers should not be significantly affected by proposed rule. The proposed regulation may reduce the number of recreational anglers making trips specifically for the harvest of flounder. If a reduction does occur, this may reduce receipts of persons who presently provide supplies or equipment for such trips. Long-term economic benefits of an undetermined magnitude may also accrue to fishermen in both recreational and commercial sectors if the southern flounder stock is actually limited by parental stock spawning potential ratio. If the proposed regulations provide increases in that ratio, then future benefits may be derived from increased recruitment of southern flounder to the recreational and commercial fisheries. The probability or dimensions of this change can not be estimated at this time, due to lack of data.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be little or no effect on competition or employment in the public sector. This rule will have no estimable effect on competition and employment in the private sector. While some effects may occur, no data is presently available to estimate the dimensions of this change.

Fredrick J. Prejean, Sr.
Undersecretary
9606#024

Richard W. England
Assistant to the
Legislative Fiscal Officer

Act 46 authorized certain funds to be "pledged and dedicated to the administration of the state unemployment compensation program for...an electronic transfer system". The proposed rule provides that certain employers *SHALL REMIT ANY SUCH PAYMENT(S), CONTRIBUTIONS, OR REIMBURSEMENTS BY ELECTRONIC-FUND TRANSFER*. The use of the term "shall" was not within the scope or the intent of the enabling legislation.

The committee therefore suggests the phrase "shall remit" be replaced with the phrase "may remit". The pertinent "shall remit" phrases are found in subsections A, B, and C.

(2) determined the phrase "...subject to penalty and interest under LAS-R.S. 23:1543 for failure to timely remit electronic transfer of funds for any such payment(s)" was open for interpretation. The department is presently not penalizing for untimely remittance and discussion was offered as to the authority of the department to penalize for untimely remittance by electronic transfer. The committee offered several suggestions on the penalty provisions, but decided if the electronic transfer system was offered to employers rather than mandated to, the penalty provisions are moot.

For the above reasons, the Senate Committee on Labor Industrial Relations unanimously agreed that Proposed Rule (LAC 40:IV.375) Electronic Transfer System proposed by the Department of Labor is unacceptable.

Robert J. Barham
Chairman

9606#052

Committee Reports

COMMITTEE REPORT

Senate Committee on Labor and Industrial Relations May 14, 1996

Electronic Transfer (LAC 40:IV.375)

(Editor's Note: The full text of this proposed rule can be viewed on pages 254-255 of the March, 1996 Louisiana Register.)

Pursuant to the provisions of R.S. 49:968, the Senate Committee on Labor and Industrial Relations met on May 14, 1996 to review proposed rule LAC 40:IV.375, electronic transfer system, submitted by the Department of Labor.

Pursuant to R.S. 49:968(F), the committee:

(1) determined the proposed rule (LAC 40:IV.375) electronic transfer system was indeed authorized by Act 46 (Senate Bill 1296 by Senator Cox, et al) of the 1995 Regular Session of the Legislature; however, the mandatory application of the system on certain businesses is not within the scope nor the intent of Act 46.

Legislation

LEGISLATION

Senate

Professional and Occupational Study of Law and Rules—Senate Resolution Number 24 1996 Regular Session

To urge and request the Senate Committee on Senate and Governmental Affairs to conduct a comprehensive study of the law and rules regulating trades, occupations, and professions licensed by the state and to urge and request each state department, board, commission, or other agency which issues licenses, permits, or certificates authorizing the practice of a trade, occupation, or profession to fully enforce laws providing for suspension or revocation of trade, occupational, or professional licenses, permits, or certificates due to criminal or fraudulent activity.

WHEREAS: R.S. 37:2952 provides that all trade, occupational, or professional licensees are subject to the provisions of law requiring suspension of license for nonpayment of child support; and

WHEREAS: R.S. 37:2951 provides that default on the repayment of any loan guaranteed by the Louisiana Student Financial Assistance Commission is a ground for denying an application for, or an application for the renewal of, any license, permit, or certificate required by the state, or for the granting of a conditional license, permit, or certificate required by the state, or any of its departments, offices, agencies, and boards in order to practice or engage in trade, occupation, or profession; and

WHEREAS: R.S. 37:2950 provides that a person shall not be disqualified, or held ineligible to practice or engage in any trade, occupation, or profession for which a license, permit, or certificate is required to be issued by the state or any of its agencies or political subdivisions, solely because of a prior criminal record, except in cases in which the person has been convicted of a felony, and such conviction directly relates to the position of employment sought, or to the specific occupation, trade, or profession for which the license, permit, or certificate is sought; and

WHEREAS: R.S. 37:2590 specifically excepts any law enforcement agency, the Louisiana State Board of Medical Examiners, the Louisiana State Board of Dentistry, the Louisiana State Board of Nursing, the Louisiana State Board of Practical Nurse Examiners, State Racing Commission, State Athletic Commission, the Louisiana State Board of Pharmacy, the Louisiana State Bar Association, the Louisiana State Board of Registration for Professional Engineers and Land Surveyors, and the Louisiana State Board of Embalmers and Funeral Directors; however, these agencies, in their discretion, may adopt policy similar to that statute; and

WHEREAS: R.S. 37:2590 also specifically excepts the Office of Alcoholic Beverage Control; and

WHEREAS: R.S. 37:21 provides that unless a special law is applicable, no proceeding of any kind may be initiated by a professional or occupational board or commission as follows:

(1) If the nature of the complaint is based on negligence or gross negligence, no proceeding may be initiated after two years from discovery by the complainant. However, under no circumstances shall such a proceeding be initiated more than five years from the date of the act or omission.

(2) If the nature of the complaint is based on an intentional act or omission, no proceeding may be initiated after two years from discovery by the complainant. However, under no circumstances shall such a proceeding be initiated more than five years from the date of the act or omission.

(3) If the nature of the complaint is based on fraud, no proceeding may be initiated after two years from discovery by the complainant.

(4) If the nature of the complaint is based on a license or rules violation, no proceeding may be initiated after five years from the date of the act or omission; and

WHEREAS: that law does not apply to a physician licensed to practice medicine, a dentist, a certified public accountant, the Louisiana Cemetery Board, the Louisiana State Board of Embalmers and Funeral Directors, and the Louisiana Board of Examiners for Speech Pathology and Audiology; and

WHEREAS: there is a need to review existing law as to

effect, implementation, enforcement and uniformity.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby urges and requests that the Senate Committee on Senate and Governmental Affairs conduct a comprehensive study of the law and rules regulating trades, occupation, and professions licensed by the state.

BE IT FURTHER RESOLVED that the chairman of the Senate Committee on Senate and Governmental Affairs shall call the first meeting before August 15, 1996.

BE IT FURTHER RESOLVED that for purposes of this resolution, the committee shall have all powers of legislative committees otherwise provided by law and by the rules of the Senate and as well as all powers inherent in legislative committees and the members thereof shall receive the per diem and mileage provided for committees by the rules of the Senate.

BE IT FURTHER RESOLVED that all departments and agencies of the executive branch of state government shall cooperate with and assist the committee.

BE IT FURTHER RESOLVED that the committee shall make a written report of its findings to the Senate prior to March 1, 1997, together with any specific proposals for legislation.

BE IT FURTHER RESOLVED that each state department, board, commission, or other agency which issues licenses, permits, or certificates authorizing the practice of a trade, occupation, or profession is hereby urged and requested to fully enforce laws providing for suspension or revocation of trade, occupational, or professional licenses, permits, or certificates due to criminal or fraudulent activity.

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the governor and the commissioner of administration, and to the chief executive officer of each department in the executive branch of state government to be distributed to each entity within the respective department which issues licenses, permits, or certificates for trade, occupational, or professional licenses.

BE IT FURTHER RESOLVED that a copy of this resolution shall be submitted to the Department of the State Register for inclusion in the *Louisiana Register*.

Randy L. Ewing
President of the Senate

9606#048

Potpourri

POTPOURRI

Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set

forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	Well Name	Well No.	Serial No.
Ameritech Oil and Gas Corp.	Zwolle	Bauer et al	001	168721
Ameritech Oil and Gas Corp.	Zwolle	Bauer et al	002	168722
Ameritech Oil and Gas Corp.	Zwolle	Bauer et al	003	168723
Ameritech Oil and Gas Corp.	Zwolle	Bauer et al	005	170394
Ameritech Oil and Gas Corp.	Zwolle	Bauer et al	006	170395
Ameritech Oil and Gas Corp.	Zwolle	Bauer et al	007	170396
C. Andrade, 3rd	Caddo-Pine Island	C M Dickson Est et al	001	041838
Assoc. OandG Expl. Inc. and J. P. Owen	Hayes	Chas O Sharpe	001	106483
J. O. Blasingame	Caddo-Pine Island	Rudersdorf	J-1	075875
H. J. Bonner	Caddo-Pine Island	McCain	009	095716
H. J. Bonner	Caddo-Pine Island	McCain SWD	001	099719
Cheer and Franz	Grogan	W L Boone	004	075185
J. A. Gibson et al	Caddo-Pine Island	Muslow	002	116728
F. F. Lewis	Caddo-Pine Island	Chadick	A-1	074602
M. W. Maxwell	Olla	WX F RA SU35; Kees Heirs	003	173018
Noble Petroleum Corporation	Caddo-Pine Island	Thacker A	002	142761
O and J Oil	Big Island	WX A RA SUA;M Wilson	001	203172

O and J Oil	Big Island	Michael Wilson SWD	001	172810
Ody Oil Corp.	Houma	KBR B RF SUC; Daspit	002	196341
Pritchard Engineering	Spider	Bissell et al	001	177442
Smackover Producing Co.-Jones	Pendleton-Mary	4L Co-Texaco D	002	104474
Sun Resources, Inc.	Grand River	LT RA SUA; Schwing-Levert	001	120453
Sun Resources, Inc.	Grand River	MI SUA; Schwing-Levert	1-D	121454
Weh-Mar Oil Co.	Longwood	Salley Wheeler Estate Fee	001	062405

George L. Carmouche
Commissioner

9606#059

CUMULATIVE INDEX
(Volume 22, Number 6)

1996	
<i>Pages</i>	<i>Issue</i>
1 - 75	January
76 - 158	February
159 - 264	March
265 - 322	April
323 - 410	May
411 - 526	June

ADMINISTRATIVE CODE UPDATE

Cumulative

- January 1995 - December 1995, 64
- January 1996 - March 1996, 313

AGRICULTURE AND FORESTRY

Agricultural and Environmental Sciences

- Pesticide, 291N
- Plant quarantine, 314P
- Retail floristry exam, 153P, 405P

Agricultural Commodities Commission

- Wheat, 414ER

Forestry, Office of

- Timber stumps, 1ER, 121N, 325ER

Livestock Sanitary Board

- Animal disease, 414ER
- Brucellosis, 462N

Structural Pest Control Commission

- Bait/baiting systems, 77ER

CIVIL SERVICE

Civil Service Commission

- Compensation, 377N
- Leave, 294N
- Prohibited activities, 121N

Ethics for Elected Officials, Board of

- Small municipalities, 376N

CULTURE, RECREATION AND TOURISM

Secretary, Office of the

- State byways, 37N

State Library, Office of

- Certification, 241N
- Library construction/technology, 12R
- Name change, 241N
- Restructuring, 241N

ECONOMIC DEVELOPMENT

Boxing and Wrestling Commission

- Amend/repeal rules, 377N

Certified Shorthand Reporters, Board of Examiners of

- Disclosure, 445R

Commerce and Industry, Office of

- Enterprise Zone Program, 122N, 445R

Contractors, Licensing Board for

- Residential construction, 94R

Economic Development Corporation

- Small business, 415ER, 417ER

Financial Institutions, Office of

- Deed escrow, 187R

Racing Commission

- Bleeder medication, 12R
- Entry after excused, 13R
- Field less than eight, 13R
- First aid, 325ER, 378N
- Superfecta, 326ER, 379N
- Timing of entering, 13R
- Video Poker purse, 13R

Real Estate Commission

- Adjudicatory proceeding, 95R
- Compensation, 96R
- Insufficient funds, 161ER, 190R
- License/registration/certificate, 96R
- Symbols, tradenames, trademark, 96R

EDUCATION

Elementary and Secondary Education, Board of

Bulletin 741

- Adult education, 97R
- Instructional staff, 130N, 338R
- Religion, 130N, 338R
- School administrators, 129N, 337R, 379N

Bulletin 746

- Business/office education, 463N
- Child welfare/attendance, 98R
- Foreign language, 38N, 277R
- Speech/language/hearing, 464N
- Vocational-technical personnel, 466N

Bulletin 1191

- School transportation, 467N

Bulletin 1196

- Breakfast, 242N, 452R
- Food service manager, 242N, 452R

Bulletin 1706

- Discipline, 2ER, 190R
- Exceptional children, 78ER, 421ER

Bulletin 1868

- Personnel Manual, 2ER, 327ER

Bulletin 1882

- Administrative Leadership Academy, 380N

Bulletin 1943

- Teacher assessment, 38N, 98R, 277R
- Dropout, 295N
- Medication policy, 39N, 277R
- Special Education Advisory Council, 99R
- Technical college, 130N, 453R

Student Financial Assistance Commission

- Bylaws, 468N
- Federal Family Educational Loan Program (FFELP), 190R
- Scholarship and Grant Manual, 40N, 338R

ENVIRONMENTAL QUALITY

Air Quality and Radiation Protection, Office of

- AQ126 Chemical accident, 161ER
- AQ128 Quality assurance, 14R

CR—Committee Report

ER—Emergency Rule

N—Notice of Intent

PPM—Policy and Procedure Memorandum

EO—Executive Order

L—Legislation

P—Potpourri

R—Rule

AQ131 Organic compound emission, 14R
 AQ132 Petroleum refinery, 16R
 AQ133 Ambient air standards, 41N, 278R
 AQ134 Point of custody transfer, 44N, 341R
 AQ135 Reportable quantity of VOCs, 45N, 341R
 AQ136 Miscellaneous amendments, 42N, 338R
 AQ137 VOC Storage, 131N, 453R
 AQ139 Asbestos in Schools/State Buildings, 296N
 AQ141 Perchloroethylene removal, 301N
 NE015 Shielding exemptions NRC revisions, 380N
 Fugitive emission, 405P
 Inspection and Maintenance Program (I/M), 259P
 Ozone attainment, 153P
 Permit procedure, 66P
 Regulatory agenda, 316P
 State Implementation Plan (SIP), 259P
 Title V Application, 316P

Legal Affairs and Enforcement, Office of
 Emergency response, 153P

Management and Finance, Office of
 OS20 Fee payment, 17R

Secretary, Office of the

HW051 Land disposal, 327ER
 OS018 Emergency response, 381N
 OS14 Confidentiality, 342R
 OS20 Fee payment, 17R

Solid and Hazardous Waste, Office of

HW45 Foreign hazardous waste, 20R, 100R
 HW48 Land ban, 22R
 SW018 Ditches/air curtains, 278R
 SW019 Waste tire transporter, 3ER
 SW020 Waste tire, 162ER
 SW021 Waste tire, 422ER

EXECUTIVE ORDERS

EWE 95-36 West Baton Rouge Parish Bond Allocation, 1
 EWE 96-1 TransAmerica Refining Corporation Bond Allocation, 76
 MJF 96-1 Affirmative Action, 76
 MJF 96-2 Interagency Action Council for the Homeless, 159
 MJF 96-3 Affirmative Action, 160
 MJF 96-4 Inmate Labor, 161
 MJF 96-5 Assistant District Attorneys Advisory and Review Commission, 265
 MJF 96-6 Safe/Drug Free Schools/Communities Advisory Council, 265
 MJF 96-7 Small Business Bonding Assistance, 266
 MJF 96-8 Louisiana LEARN Commission, 268
 MJF 96-9 Governor's DWI/Vehicular Homicide Task Force, 323
 MJF 96-10 Oklahoma City Bombing Anniversary, 323
 MJF 96-11 Housing Finance Agency Bond Allocation, 324
 MJF 96-12 Governor's Military Advisory Commission, 411
 MJF 96-13 Flying the POW/MIA Flag Over the State Capitol, 411
 MJF 96-14 Procurement of Small Purchases, 412

FIREFIGHTERS' PENSION AND RELIEF FUND

City of New Orleans and Vicinity
 Cost of living adjustment, 100R
 Direct rollover, 243N

GOVERNOR'S OFFICE

Administration, Division of
 Commissioner, Office of
 Travel—PPM49, 302N, 423ER
 Facility Planning and Control, Office of
 Controversy resolution, 345R
 Selection procedure, 133N, 345R
 State Purchasing, Office of
 Procurement Code, 280R
 Uniform Payroll, Office of
 Payroll deduction, 22R
Community Development, Office of
 Consolidated Annual Action Plan, 153P
Crime Victims Reparations Board
 Victim compensation, 269ER, 302N
Oil Spill Coordinator's Office
 Contingency plan, 406P

HEALTH AND HOSPITALS

Chiropractic Examiners, Board of
 Conduct/ethics, 191R
 Financial interest, 191R
 Illegal payment, 191R
 Peer review, 191R
Citizens with Developmental Disabilities, Office for
 Consumer grievance, 134N
Dentistry, Board of
 Advertising/soliciting, 22R, 23R
 Continuing education, 24R
 Dental assistant, 22R
 Dental hygienist, 22R
 Hearing, 24R
 Licensure, 22R, 23R, 23R
 Parental consent, 23R
 Restricted license, 23R
Electrolysis Examiners, Board of
 Electrologist technician, 46N
Embalmers and Funeral Directors, Board of
 Exam, 154P, 316P
Licensed Professional Vocational Rehabilitation Counselors, Board of
 License, 305N
Medical Examiners, Board of
 Clinical laboratory, 195R
 Physician assistant, 200R
 Physician/surgeon, 207R, 280R
 Registered nurse, 244N
Nursing, Board of
 Annual meeting, 103R
 Domicile, 103R
 Fee, 426ER, 472N
 Registered nurse, 244N, 280R
Pharmacy, Board of
 Pharmacy technician, 46N
 Practice, 50N
Physical Therapy Examiners, Board of
 Licensure, 284R
Professional Counselors, Board of Examiners of
 General provisions, 101R

CR—Committee Report

ER—Emergency Rule

N—Notice of Intent

PPM—Policy and Procedure Memorandum

EO—Executive Order

L—Legislation

P—Potpourri

R—Rule

Public Health, Office of

Abortion, 4ER, 25R
Bacteriological laboratory, 247N, 306N, 455R
Children's special health, 140N, 362R
Community based/rural health service, 472N
Human subjects, 147N, 368R
Office of Research Integrity (establishes), 140N, 362R
Sanitary Code

Lead poisoning, 384N
Mechanical wastewater, 307N
Molluscan shell, 328ER, 385N
Nutria, 26R

Secretary, Office of the

Ambulance, 285R
Annual service agreement, 214R
Case management, 79ER, 162ER, 170ER, 427ER
Chiropractic care, 216R
Dependent children, 426ER
Direct reimbursement, 429ER
Disproportionate share, 163ER, 430ER
Denture, 104R
Developmentally disabled, 433ER
Early Periodic Screening Diagnosis and Treatment (EPSDT), 104R
Emergency medical transportation, 105R, 105R
Ephedrine, 215R
Experimental procedure, 476N
Facility need review
Beds, 387N
Nursing facility, 387N
Federally qualified health center, 106R
Home and community based services, 81ER
Home health services
Homebound criteria, 218R
Reimbursement, 218R
Hospital program
Inpatient, 106R, 219R
Median, 32R
Out-of-state services, 33R
Outpatient, 33R
Reimbursement inflation, 33R
Informed consent
Female genital treatment, 29R
Hemodialysis, 30R
Maternity, 456R
Urology, 31R, 285R
Institutional services, 272ER
Intermediate care facility, 5ER, 369R
Investigational procedure, 476N
KIDMED, 106R
Laboratory, 5ER, 107R, 219R
Mammoplasty, 308N
Maternal and Child Health Block Grant, 387N
Medical equipment, 217R
Medicaid, 50N, 370R, 370R, 388N, 441ER
Medically needy, 434ER
Mental health, 107R, 166ER, 456R
Mentally retarded, 433ER
Neonatology, 8ER, 248N
Nursing facility, 7ER, 34R, 34R, 271ER, 309N, 330ER, 369R, 435ER, 438ER
Nursing home, 477N

Pharmacy program

Benefits, 273ER
Copayment, 107R
Drug utilization, 273ER
Medicare B, 274ER
Overhead cost, 108R
Point of sale, 273ER
Reimbursement, 249N
Private ICF/MR facility, 184ER, 249N
Professional service program, 108R, 330ER
Rehabilitation clinic, 109R
Rural health, 109R
Substance abuse, 109R
Transplant, 185ER, 250N
Tuberculosis, 110R
Vaccine, 8ER, 259P, 334ER, 502N
X-ray, 5ER, 107R, 219R
Speech-Language Pathology and Audiology, Board of Examiners for
Rules repeal/repromulgation, 346R

INSURANCE

Insurance, Commissioner of

Regulation 54 Automobile insurance, 68P
Regulation 58 Viatical settlements, 148N, 404CR
Regulation 59 Health insurance data, 251N

LABOR

Employment Security, Office of

Electronic transfer, 9ER, 185ER, 254N, 520CR

Workers' Compensation, Office of

Assessment, 34R
Compliance, 220R, 285R, 503N
Filing, 34R
Forms, 221R, 503N
Fraud, 222R, 504N

LOUISIANA LEGISLATURE

Senate

Office of the President
Professional/occupational law/rules study (SR24), 520L

NATURAL RESOURCES

Conservation, Office of

Commercial facility application, 317P
Oilfield waste, 406P
Orphaned oilfield, 68P, 155P, 317P, 521P

PUBLIC SAFETY AND CORRECTIONS

Motor Vehicles, Office of

Driving school, 286R

Pardons, Board of

Clemency, 81ER

Private Investigator Examiners, Board of

Apprentice, 255N, 459R
Continuing education, 150N, 371R

State Police, Office of

Bingo/keno/raffle, 110R
Handgun, 505N

CR—Committee Report

ER—Emergency Rule

N—Notice of Intent

PPM—Policy and Procedure Memorandum

EO—Executive Order

L—Legislation

P—Potpourri

R—Rule

REVENUE AND TAXATION**Alcoholic Beverage Control, Office of**

Alcoholic beverage sampling, 116R

Excise Taxes Division

Dyed special fuel, 256N, 460R

Sales Tax Division

Alternate filing period, 512N

Motion picture rental, 514N

Nonprofit organization, 515N

Rental exemption, 516N

Secretary, Office of the

Electronic filing, 35R

Severance Tax Division

Natural gas, 317N

Tax Commission

Ad valorem tax, 117R

Timber stumpage, 1ER, 121N, 325ER

SOCIAL SERVICES**Community Services**

Homeless, 260P

Social Services Block Grant (SSBG), 318

Weatherization, 318

Family Support, Office of

Aid to Families with Dependent Children (AFDC), 517N

Child support, 118R, 223R

Food Stamps, 52N, 275ER, 286R, 311N, 391N, 517N

Paternity, 10ER, 117R, 118R

Uniform Interstate Family Support Act, 224R

Rehabilitation Services, Office of

Randolph-Sheppard Trust, 119R

Secretary, Office of

Child Care and Development Block Grant, 406P

TRANSPORTATION OF DEVELOPMENT**Highways/Engineering**

Rural water district, 228R

Signs, 224R, 228R

Professional Engineers and Land Surveyors, Board of**Registration for**

Property boundary, 392N

Seals, 54N, 287R

Temporary permit, 53N, 286R

Sabine River Compact Administration

Spring meeting, 406P

Weights, Measures, and Standards

Legal limitation, 120R

Violation review committee, 151N, 372R

TREASURY**Bond Commission**

Line of credit, 10ER

Reimbursement contract, 442ER

Housing Finance Agency

HOME funds, 335ER

HOME rental housing, 59N, 311N

State Employees Group Benefits Program, Board of**Trustees of the**

Prescription, 54N, 287R

State Employees' Retirement System, Board of**Trustees of the**

Rules codification/amendment, 57N, 373R

Teachers' Retirement System, Board of Trustees of the

Retiree's return to work, 58N, 290R

WILDLIFE AND FISHERIES**Fisheries, Office of**

Commercial fisherman, 60N, 275ER, 373R

Dealer receipt, 60N, 275ER, 373R

Flounder, 276ER, 336ER, 518N

Mussel, 374R, 444ER

Net buy-back, 231R

Nets, 231R

Oyster, 120R

Pompano, 395N

Wildlife and Fisheries Commission

Bass, 61N, 376R

Black Drum, 83ER, 233R

Commercial fisherman, 85ER, 235R

Flounder, 83ER, 233R, 337ER, 519N

Hunting season, 258N

Mullet, 86ER, 236R

Mussel, 62N, 319N

Net buy-back, 88ER

Oyster, 90ER, 337ER

Physically-challenged hunter, 397N

Pompano strike net, 83ER

Red Snapper, 11ER, 186ER, 276ER, 445ER

Reef fish, 401N

Rod and reel, 90ER, 237R

Sheepshead, 83ER, 233R

Shrimp, 336ER

Spotted Seatrout, 91ER, 238R

Traversing, 240R

Timken wildlife management, 402N

Waddill Wildlife Refuge, 403N

CR—Committee Report

ER—Emergency Rule

N—Notice of Intent

PPM—Policy and Procedure Memorandum

EO—Executive Order

L—Legislation

P—Potpourri

R—Rule



