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# EXECUTIVE ORDERS

## EXECUTIVE ORDER EWE 95-18

### Issuance of Series 1995-A Bonds for Superdome Improvements

WHEREAS: the Louisiana Stadium and Exposition District (the "district") was originally created as a body politic and corporate of the State of Louisiana (the "state"), composed of all of the territory in the Parishes of Orleans and Jefferson, under the authority of Article XIV, Section 47 of the 1921 Constitution of the State, as amended, continued as a statute by Article XIV, Section 16 of the 1974 Constitution of the State (the "original act"), for the purpose of planing, financing, developing, maintaining and operating facilities to be located within the district to accommodate the holding of sports events, athletic contests and other events of public interest; and

WHEREAS: the district has heretofore issued its Hotel Occupancy Tax and State Lease-Rental Refunding Bonds, Series 1976, in the original principal amount of \$134,00,000 (the "Series 1976 Bonds") pursuant to the original act and the resolution adopted by the district on February 21, 1969, as amended by resolutions adopted by the district on August 27, 1970, October 12, 1971 and October 28, 1976, and a series resolution adopted by the district on October 28, 1976 (collectively, the "Series 1976 Resolution"), for the purpose of refunding all of the district's outstanding bonds which were issued for the purpose of financing the development and construction of the Superdome in New Orleans and parking and related facilities and the acquisition of land necessary therefor, which Series 1976 Bonds were payable from the revenues (as defined in the Series 1976 Resolution) and the proceeds of the Hotel Occupancy Tax (as defined in the Series 1976 Resolution); and

WHEREAS: the Superdome opened in August of 1975 and is leased by the district to the state and has been in operation continuously since that time; and

WHEREAS: the district initially managed and operated the Superdome on behalf of the state and in 1976, by Act 541 of the 1976 Regular Session of the Louisiana Legislature, the responsibility for the management and operation of the Superdome was placed in the office of the governor of the state; and

WHEREAS: in 1977, the District was transferred to and placed in the office of the governor of the state pursuant to the Executive Reorganization Act; and

WHEREAS: pursuant to Act 541 of the 1976 Regular Session of the Louisiana Legislature, as amended by Act 499 of the 1978 Regular Session of the Louisiana Legislature, Act 449 of the 1980 Regular Session of the Louisiana Legislature, Act 927 of the 1981 Regular Session of the Louisiana Legislature, Act 476 of the 1984 Regular Session of the

Louisiana Legislature, Act 259 of the 1989 Regular Session of the Louisiana Legislature, and Act 640 of the 1993 Regular Session of the Louisiana Legislature, modifying and supplementing the original act as may be amended hereafter (collectively, the "act"), the district is authorized to issue not exceeding \$60,000,000 of its refunding bonds to refund all of the district's outstanding Series 1976 Bonds and not exceeding \$155,000,000 of improvements and construction bonds to finance the projects set forth in the act upon compliance with the conditions prescribed by the act; and

WHEREAS: pursuant to the act and the general bond resolution adopted by the district on January 31, 1994, as amended and supplemented by the First Supplemental Resolution adopted by the district on March 28, 1994 (collectively, the "bond resolution"), the district issued \$63,500,000 of its Hotel Occupancy Tax Bonds, Series 1994-A (the "outstanding bonds"), for the purpose of refunding the district's outstanding Series 1976 Bonds, funding the reserve fund, paying the costs of preparing plans and specifications for the projects, including architects and engineers fees and expenses, design consultants fees and expenses, costs and expenses of feasibility studies of the projects, site acquisitions for ingress and egress purposes and site preparations for the projects, other costs incidental to the foregoing, and costs of issuance of the bonds, including the purchase of the reserve fund insurance policy, and paying the premium for the bond insurance policy; and

WHEREAS: pursuant to the act and the bond resolution, the district desires to issue not exceeding \$14,500,000 of Hotel Occupancy Tax Bonds, Series 1995-A (the "Series 1995-A Bonds") for the purpose of acquiring and installing a new artificial turf surface in the Superdome and acquiring and installing replacement seats in the terrace section and additional seats in certain other sections of the Superdome, and acquiring and constructing a professional football training facility in Jefferson Parish; and

WHEREAS: the Series 1995-A Bonds will rank on a parity in all respects with the Outstanding Bonds; and

WHEREAS: the act provides that for the purposes of and in connection with the undertakings authorized by the act, including the issuance and servicing of any bonds, the district shall be acting solely in its capacity as a political subdivision of the state; and

WHEREAS: the Series 1995-A Bonds will not constitute an indebtedness, general or special, or a liability of the state or the Parishes of Orleans and Jefferson, State of Louisiana (the "parishes") and will not be considered a debt of the state or the parishes within the meaning of the Constitution or the states (sic) of the state and will not constitute a charge against the credit or taxing power of the state or the parishes, but are limited obligations of the district, which is obligated to pay the principal of, premium, if any, and interest on the Series 1995-A Bonds only from (i) the tax revenues (as defined in the bond resolution) derived from the collection of the Hotel Occupancy Tax (as defined in the bond resolution) being levied by the district pursuant to the original act and the tax ordinance (as defined in the bond resolution) and collected pursuant to the



collection agreement (as defined in the bond resolution), and (ii) other funds and accounts pledged pursuant to the bond resolution; and

WHEREAS: the act further provides that the Series 1995-A Bonds shall be authorized by executive order of the governor.

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

SECTION 1: Pursuant to the provisions of the act and in accordance with the terms of the bond resolution, as the same may be amended and supplemented by supplemental resolution providing for the details of the Series 1995-A bonds in accordance with the terms of their sale, the District is authorized to issue the Series 1995-A Bonds.

SECTION 2: This executive order shall be effective upon signature of the governor.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 7th day of April, 1995.

Edwin Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9505#016

# EMERGENCY RULES

## DECLARATION OF EMERGENCY

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

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

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

The effective date of this emergency rule is April 30, 1995 and it shall be in effect for 120 days or until the final rule takes effect through the normal promulgation process, whichever is shortest.

## Title 7 AGRICULTURE AND ANIMALS Part XXXIX. Forestry

### Chapter 201. Timber Stumpage

#### §20101. Stumpage Values

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

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

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

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

Bob Odom, Commissioner  
Agriculture and Forestry

Malcolm B. Price, Chairman  
Tax Commission

9505#002

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

#### Bulletin 1706—Discipline

The State Board of Elementary and Secondary Education, at its meeting of January 26, 1995, exercised those powers conferred by the Administrative Procedure Act, R.S. 49:953(B), and adopted as an emergency rule, Section 459 of Bulletin 1706, Regulations for Implementation of the Exceptional Children's Act. Emergency adoption was based on the recommendation of legal counsel and the imminent peril to health, safety, and welfare of students and the need for

adequate due process timelines to protect the rights of students and school personnel. Effective date of the following emergency rule is May 26, 1995.

Revised Section 459 (Discipline) of Bulletin 1706 was previously adopted as an emergency rule and printed in full on pages 133-134 of the February, 1995 issue of the *Louisiana Register*. Re-adoption as an emergency rule is necessary in order to continue the present policy until it is finalized as a rule.

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

HISTORICAL NOTE: LR 21:

Carole Wallin  
Executive Director

9505#004

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

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

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

Included in Bulletin 1868, under Chapter D: Employee Compensation, Section 145: Vocational-Technical System is the Salary Schedule for Technical Institutes. This Section 145 of Bulletin 1868 supersedes the emergency rule relative to the Salary Schedule for Technical Institutes which appeared in the May, 1993 issue of the *Louisiana Register* on pages 597—604.

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

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

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

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

## Title 28 EDUCATION

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

#### A. Bulletin 1868

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

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.6, R.S. 17:7(10), R.S. 17:81.4, R.S. 17:1941-1956; R.S. 17:1993.

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

(It should be noted that the clause "exclusive of the central office staff" which appeared after Special School District Number 1 has been eliminated from the bulletin.)

Carole Wallin  
Executive Director

9505#003

## DECLARATION OF EMERGENCY

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

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

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 30:2011, the assistant secretary of the Department of Environmental Quality (DEQ) declares that an emergency action is necessary because the current rule, LAC 33:III.1109, entitled "Control of Air Pollution from Outdoor Burning", is unenforceable. This emergency action is extremely important in order to protect the citizens of our state who suffer from respiratory problems. It is also important because smoke from open burning near public roadways could cause hazardous driving conditions.

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

This emergency rule is effective April 17, 1995, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first.

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

**Chapter 11. Control of Emissions of Smoke**

**§1109. Control of Air Pollution from Outdoor Burning**

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

\* \* \*

[See Prior Text in B-E]

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

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

James B. Thompson, III  
Assistant Secretary

9505#012

**DECLARATION OF EMERGENCY**

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

Mental Health Rehabilitation

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

The Bureau of Health Services Financing adopted a rule to revise certain provisions of the Mental Health Rehabilitation Program in order to incorporate the program guidelines and interpretations of the Health Care Financing Administration. This rule was adopted on April 20, 1993 and published in the *Louisiana Register*, Volume 19, Number 4. A subsequent rule established service limits for certain mental health rehabilitation services and revised the definition of treatment integration to ensure the inclusion of appropriate therapeutic principles and skills for this service component and to generate cost savings in the program. This rule was published by reference in the *Louisiana Register* on December 20, 1994 Volume 20, Number 12. The Health Care Financing Administration has provided further program guidance through the identification of an unallowable charge for which the bureau has been providing reimbursement under the Medicaid Program. This unallowable charge is the collateral contact service identified in the above-cited December 20, 1994 rule on limits for mental health rehabilitation services. The Health Care Financing Administration has determined that this activity

is an integral part of the development and updating of the plan of care and the provision of treatment integration and it is not a distinct reimbursable service under the Medicaid Program. Therefore, the bureau is adopting the following emergency rule to discontinue Medicaid reimbursement for this activity.

This emergency rule is adopted to avoid a potential disallowance and fiscal crisis in the Medicaid Program. Adoption of this emergency rule is anticipated to reduce program expenditures approximately by \$258,041 for the remainder of state fiscal year 1995 which annualized would be \$3,096,494.

**EMERGENCY RULE**

Effective May 1, 1995 the Bureau of Health Services Financing will not reimburse for collateral contacts in the Mental Health Rehabilitation Program.

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

Rose V. Forrest  
Secretary

9505#011

**DECLARATION OF EMERGENCY**

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

Nursing Facility Services Reimbursement

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

The Bureau of Health Services Financing established the current prospective reimbursement methodology for private nursing facility services effective August 1, 1984 by rule as published in the June 20, 1994 issue of the *Louisiana Register* (Volume 10, Number 6, pages 467-468). This methodology utilizes a base rate determined according to a uniform recipient level of care designation (Intermediate Care-I, Intermediate Care-II and Skilled Nursing) which is adjusted by specific economic indices. Subsequently, the provisions of nursing home reform as mandated by the Omnibus Budget Reconciliation Act of 1987 were established by rule in the December 20, 1990 issue of the *Louisiana Register* (Volume

16, Number 12, page 1061). In addition, subsequent rules have been adopted for specialized nursing facility levels of care for specific patient types (SN-Infectious Disease, SN-Technology Dependent Care and SN-Neurological Rehabilitation Treatment Program).

The following emergency rule repeals the August 1, 1984 rule and adopts provisions for private nursing facility services which re-establish a prospective cost-related methodology based on specific cost categories for each level of care and specifies the inflationary adjustment mechanism or recalculation period. Within this framework the following changes are included: the new categories consist of three direct and five indirect resident care costs and the incentive factor; the annual wage for nonsupervisory service workers is deleted as a single component but the following categories where these and other costs are incorporated, i. e. housekeeping/linen/laundry, other dietary, plant operation and maintenance, administrative and general are established; nursing services cost are limited to one category. This revision of the methodology represents an improved and more efficient manner of determining cash factors reimbursable under the Medicaid Program. The calculation of the incentive factor remains at five percent but excludes building costs from the computation. The percentile to be utilized are changed from the single current 60th percentile to the following percentiles: direct resident care costs (80th); indirect resident care costs are at the 60th percentile except housekeeping/linen/laundry (70th). The required nursing service hours remain at the current levels: the intermediate care levels one and two remain at 2.35, and the skilled nursing level continues to be 2.6.

The above changes were implemented through emergency rule making and published in the Louisiana Register on January 20, 1995, Volume 21, Number 1. Implementation of the above changes through emergency rulemaking is necessary to ensure that Medicaid payment rates for nursing facility services reflect current economic conditions and provide full reimbursement for the allowable costs for each level of care in a private facility which is economically and efficiently operated. Further, these changes are necessary to avoid possible penalties or sanctions from the federal government.

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

#### Emergency Rule

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

## REIMBURSEMENT METHODOLOGY FOR PRIVATE NURSING FACILITIES

### A. General Provisions

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.

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.

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.

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

(1) *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.

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

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

(4) *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.

(5) *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.

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

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

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

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

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

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

2. Table I. Base Rate Components

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. **Annualization**

1) 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.

2) 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:

- 1) temporary adjustments; or
- 2) base rate adjustments as described below.

5. 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.

c. 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

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.

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.

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.

1. 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 twelve month fiscal year.

2. 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.

3. 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.

### 4. Sales of Facilities.

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.

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.

**5. New Facilities**

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.

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.

A copy of this emergency rule may be obtained from the Parish Medicaid Office.

Rose V. Forrest  
Secretary

9505#006

**DECLARATION OF EMERGENCY**

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

**Vaccines for Children Program**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, has adopted the following emergency rule in the Medical Assistance Program effective May 20, 1995 as authorized by R.S. 46:153 and pursuant to the Social Security Act. This emergency rule is in accordance with the Administrative Procedure Act, R.S. 49:953(B). It shall remain in effect for the maximum period allowed by the act or until adoption of the rule, whichever occurs first.

The Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 Section 13631 created the Pediatric Vaccine Distribution Program (known as the Vaccines for Children Program) which became effective October 1, 1994. OBRA 1993 added a new Section 1928 to the Social Security Act which requires that states establish a program for the purchase and distribution of pediatric vaccines to providers qualified

under and registered with the program for the purpose of immunizing children eligible under the act. One of the federally mandated groups of children who are entitled to receive immunizations without charge for the cost of vaccines to their parents/guardians are Medicaid eligible children. Therefore, the Medicaid Program is required to reimburse qualified and registered providers for the administration of the immunization to Medicaid eligible children. The Health Care Financing Administration and the Office of Public Health within the Department of Health and Hospitals are responsible for the distribution of these vaccines to private providers who are registered and qualified under the federal requirements to receive and administer these vaccines. At this time the Office of Public Health is able to distribute these vaccines only to their public health units and the federally qualified health centers.

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

**Emergency Rule**

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

1. A qualified and registered provider must:
  - A. be a licensed health care provider who has authority under Louisiana state law to administer pediatric vaccines;
  - B. be an enrolled Medicaid provider and an enrolled Vaccines for Children Program provider; and
  - C. not have been found by the Health Care Financing Administration or Louisiana to have violated a provider agreement or other applicable requirements.
2. Medicaid reimbursement for the administration cost of the pediatric vaccines is \$10.50 for the first year and this rate will 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. Medicaid reimbursement for the cost of the pediatric vaccines administered to Medicaid-eligible children that may be obtained through the Vaccines for Children Program will remain at the current Medicaid payment rates through a date to be determined by the Bureau. Subsequent to that time the Medicaid Program will begin to reimburse only the \$10.50 for the administration cost.

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

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

Rose V. Forrest  
 Secretary

9505#009

### DECLARATION OF EMERGENCY

**Department of Labor  
 Office of Workers' Compensation**

Medical Reimbursement Schedule (LAC 40:I.Chapter 51)

In accordance with emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 23:1034.2 and 23:1203, the director of the Office of Workers' Compensation declares that the following rules and regulations are adopted to be effective June 1, 1995, for a period of 120 days or until the final rule is adopted, whichever occurs first.

The adoption and amendment of these rules is necessary because the coding system currently used in the workers' compensation reimbursement schedule is inconsistent with the system used in the Medicare program and, as such, has caused medical providers to be required to use two codes for the same treatment, which has the potential of creating billing errors and of causing medical providers to refuse to treat workers' compensation patients. It is necessary that the Office of Workers' Compensation adopt immediate updates of the medical reimbursement schedule incorporating 1995 procedure codes.

## Title 40 LABOR AND EMPLOYMENT Part I. Workers' Compensation Administration Chapter 51. Medical Reimbursement Schedule and Billing Instruction

### 1995 CPT UPDATES

The new 1995 CPT codes are to be incorporated into the current Louisiana Workers' Compensation Reimbursement Schedule effective June 1, 1995. These codes are used in conjunction with Appendix B - Summary of Additions, Deletions and Revisions as found in the 1995 CPT book.

### Reimbursement for New 1995 CPT Codes Office of Worker's Compensation Administration 1995 CPT CODES

CPT CODE	MOD	DESCRIPTION * * *	REIMBURSEMENT ALLOWED
19367		Breast reconstruction	\$3,412
19368		Breast reconstruction	3,861
19369		Breast reconstruction	3,688
25337		Reconstruct ulna/radioulnar	1,341
25830		Fusion radioulnar jnt/ulna	1,341
29445		Apply rigid leg cast	263
31254		Revision of ethmoid sinus	790
31255		Removal of ethmoid sinus	1,191
31256		Exploration maxillary sinus	523
31267		Endoscopy, maxillary sinus	805
31276		Sinus surgical endoscopy	1,041
33321		Repair major vessel	3,087
33332		Insert major vessel graft	2,797
33572		Open coronary endarterectomy	582
36834		Repair A-V aneurysm	1,315
37209		Exchange arterial catheter	174
43107		Removal of esophagus	3,788
43108		Removal of esophagus	4,388
43112		Removal of esophagus	3,888
43113		Removal of esophagus	4,457
43116		Partial removal of esophagus	4,180
43117		Partial removal of esophagus	4,096
43118		Partial removal of esophagus	4,318
43121		Partial removal of esophagus	3,727
43122		Partial removal of esophagus	3,727
43123		Partial removal of esophagus	4,318
43124		Removal of esophagus	3,616
43249		Esophagus endoscopy, dilation	485
43360		Gastrointestinal repair	3,613
43361		Gastrointestinal repair	4,180
43405		Ligate/staple esophagus	2,227
43502		Surgical repair of stomach	1,836
43847		Gastric bypass for obesity	2,147
43848		Revision gastroplasty	2,814
44121		Removal of small intestine	512
44139		Mobilization of colon	257
45113		Partial proctectomy	3,088
45123		Partial proctectomy	1,927



45190		Destruction rectal tumor	984	86303	Hepatitis C antibody	BR
45562		Exploration/repair of rectum	1,456	86313	Immunoassay, infectious agent	BR
45563		Exploration/repair of rectum	2,297	86315	Immunoassay, infectious agent	BR
46288		Repair anal fistula	786	86406	Particle agglutination test	BR
47015		Inject/aspirate liver cyst	1,166	86617	Lyme disease antibody	BR
47134		Partial removal, donor liver	4,508	92587	Evoked auditory test	113
47136		Transplantation of liver	7,373	92587	26 Evoked auditory test	18
47711		Excision of bile duct tumor	2,288	92587	TC Evoked auditory test	95
47712		Excision of bile duct tumor	2,678	92588	Evoked auditory test	155
47741		Fuse gallbladder and bowel	2,352	92588	26 Evoked auditory test	48
47785		Fuse bile ducts and bowel	2,815	92588	TC Evoked auditory test	108
47900		Suture bile duct injury	2,190	92980	Insert intracoronary stent	2,273
49422		Remove perm cannula/catheter	756	92981	Insert intracoronary stent	708
49428		Ligation of shunt	228	93270	ECG recording	89
49429		Removal of shunt	731	93271	ECG/monitoring and analysis	173
51784		Anal/urinary muscle study	188	93272	ECG/review, interpret only	68
51784	26	Anal/urinary muscle study	158	93990	Doppler flow testing	218
51784	TC	Anal/urinary muscle study	30	93990	26 Doppler flow testing	32
52327		Cystoscopy, inject material	647	93990	TC Doppler flow testing	186
52647		Laser surgery of prostate	1,432	95812	Electroencephalogram (EEG)	216
52648		Laser surgery of prostate	1,518	95812	26 Electroencephalogram (EEG)	113
57522		Conization of cervix	521	95812	TC Electroencephalogram (EEG)	102
59051		Fetal monitor/interpret only	119	95813	Electroencephalogram (EEG)	261
59855		Abortion	624	95813	26 Electroencephalogram (EEG)	159
59856		Abortion	942	95813	TC Electroencephalogram (EEG)	102
59857		Abortion	1,146	95957	EEG digital analysis	309
60001		Aspirate/inject thyroid cyst	150	95957	26 EEG digital analysis	186
60210		Partial excision thyroid	1,459	95957	TC EEG digital analysis	123
60212		Partial thyroid excision	1,838	97032	Electrical stimulation	28
60271		Removal of thyroid	1,999	97033	Electric current therapy	29
60512		Autotransplant, parathyroid	512	97034	Contrast bath therapy	22
60521		Removal thymus gland	2,366	97035	Ultrasound therapy	23
60522		Removal of thymus gland	2,643	97036	Hydrotherapy	43
64820		Remove sympathetic nerves	1,191	97113	Aquatic therapy/exercises	46
75900		Arterial catheter exchange	1,540	97150	Group therapeutic procedures	34
75900	26	Arterial catheter exchange	53	97265	Joint mobilization	59
75900	TC	Arterial catheter exchange	1,488	97750	Physical performance test	50
76093		Magnetic image, breast	1,422	97770	Cognitive skills development	53
76093	26	Magnetic image, breast	172	99450	Life/disability evaluation	BR
76093	TC	Magnetic image, breast	1,250	99455	Disability examination	BR
76094		Magnetic image, both breast	1,867	99456	Disability examination	BR
76094	26	Magnetic image, both breast	172			
76094	TC	Magnetic image, both breast	1,695			
76936		Echo guide for artery repair	600			
76936	26	Echo guide for artery repair	153			
76936	TC	Echo guide for artery repair	447			
76941		Echo guide for transfusion	252			
76941	26	Echo guide for transfusion	144			
76941	TC	Echo guide for transfusion	109			
76945		Echo guide, villus sampling	205			
76945	26	Echo guide, villus sampling	97			
76945	TC	Echo guide, villus sampling	109			
78647		Cerebrospinal fluid scan	515			
78647	26	Cerebrospinal fluid scan	96			
78647	TC	Cerebrospinal fluid scan	419			
81020		Urinalysis, glass test	BR			
83516		Immunoassay, non antibody	BR			
85461		Hemoglobin, fetal	BR			

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2 and 1203.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:212 (February 1993), amended LR 20:1299 (November 1994), LR 21:

Alvin J. Walsh  
Director

9505#032

## DECLARATION OF EMERGENCY

### Department of Social Services Office of Rehabilitation Services

#### Voter Registration (LAC 67:VII.101)

In accordance with the provisions of R.S. 49:953(B), the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) is revising its policy through the emergency rule provision to allow the agency to provide voter registration services to applicants and clients.

The purpose of this declaration of emergency is to adopt a rule to ensure that applicants/clients are afforded an opportunity to register to vote by mail. The effective date of this emergency rule is May 1, 1995 and this shall remain in effect for a period of 120 days or until a final rule is promulgated, whichever occurs first. It is necessary to extend the previous emergency rule of January 1, 1995, since it was effective for a period of 120 days and will expire before the final rule takes effect.

Pursuant to the National Voter Registration Act of 1993 and Act 10 of the 1994 Third Extraordinary Session of the Louisiana Legislature, the department will provide to applicants/clients of LRS' programs the opportunity to register to vote. LRS is a designated voter registration agency.

In accordance with the guidelines of federal and state voter registration acts, regional offices shall provide to applicants and participants of these programs the opportunity to register to vote and shall further provide assistance to registrants.

Regional offices shall accept and mail, or otherwise submit, state voter registration forms to their appropriate registrar of voters.

#### Title 67

### DEPARTMENT OF SOCIAL SERVICES

#### Part VII. Louisiana Rehabilitation Services

#### Chapter 1. General Provisions

#### §101. Policy Manual

LRS Policy Manual provides opportunities for employment outcomes and independence to individuals with disabilities through vocational and other rehabilitation services. Its policy manual guides its functions and governs its actions within the parameters of federal law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Louisiana Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:15 (January 1995), LR 21: (May 1995).

Gloria Bryant-Banks  
Secretary

9505#010

## DECLARATION OF EMERGENCY

### Department of Treasury Louisiana Housing Finance Agency

#### Home Affordable Rental Housing Applications (LAC 16:II.Chapter 1)

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

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

This emergency rule shall be effective from its date of adoption, April 12, 1995, and shall continue in effect until the earlier of adoption of a substitute rule or 120 days.

#### Title 16

### COMMUNITY AFFAIRS

#### Part II. Louisiana Housing Finance Agency

#### Chapter 1. HOME Investment Partnership Program

#### §101. Home Program Application Fees

The following fees govern the application and reprocessing of applications for HOME Funds.

1. Application Fee

1 to 4 units	\$ 200.00
5 to 32 units	1,000.00
33 to 60 units	1,500.00
61 to 100 units	2,500.00
Over 100 units	5,000.00
2. Analysis Fee

1 to 4 units	\$ 200.00
5 to 32 units	1,000.00
33 to 60 units	1,500.00
61 to 100 units	2,500.00
Over 100 units	5,000.00
3. Reprocessing Fee

A reprocessing fee of 50 percent of the Application Fee shall be due whenever significant revisions or changes of the contents of an application require a new feasibility and/or viability analysis.
4. Cost Certification Audit Fee\* \$2,500.00

\*Only if applicant does not contract with independent CPA to perform cost certification audit.

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

**HISTORICAL NOTE:** Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 19:908 (July 1993), repromulgated LR 19:1034 (August 1993), LR 21:

**§105. Selection Criteria to Award HOME Funds for Affordable Rental Housing**

Applications for HOME Funds will be rated in accordance with the selection criteria (Appendix IX) for which the applicant must initially indicate that the project qualifies.

**APPENDIX IX POINTS**

- (A) Leverage Ratio for each HOME Dollar  
 Minimum Other Dollars
- |     |    |
|-----|----|
| \$1 | 5  |
| \$2 | 10 |
| \$3 | 15 |
| \$4 | 20 |
| \$5 | 25 |
- (B) Project to Construct or Rehabilitate Substandard Housing Units to Minimum Quality Standards with Total Funds Per Unit Not Exceeding:
- |          |    |
|----------|----|
| \$ 2,500 | 25 |
| \$ 5,000 | 20 |
| \$ 7,500 | 15 |
| \$10,000 | 10 |
| \$15,000 | 7  |
| \$20,000 | 5  |
| \$25,000 | 2  |
- (C) Project to Rehabilitate Housing Units of Historic or Architectural Significance 25
- (D) Project to Rehabilitate or create Housing Units Serving Special Needs Groups (Check one or more): 50
- |                     |       |
|---------------------|-------|
| Elderly/Handicapped | _____ |
| Homeless            | _____ |
| Disabled            | _____ |
| Physically          | _____ |
| Mentally            | _____ |
| HIV/AIDS            | _____ |
- (i) One Hundred Percent of Units serve or fifty units serve special needs group 50
- (ii) Fifty Percent or 25 units serve special needs group 25
- (iii) Twenty-Five Percent or 15 units serve special needs group 15
- (E) Project Promotes Cooperative Housing 25
- (F) Project to Establish Lease-Purchase Turnkey Program 25
- (G) Minority/Women Participation (Check only one)

Managing General Partner of Applicant or Applicant is at least 51 percent owned by one or more minority individuals 25

Managing General Partner of Applicant or Applicant is at least 30 percent owned by one or more minority individuals 15

Managing General partner of Applicant or Applicant is at least 10 percent owned by one or more minority individuals 10

Managing General Partner of Applicant or Applicant is at least 51 percent owned by women 25

Managing General Partner of Applicant or Applicant is at least 30 percent owned by one or more minority individuals 15

Managing General Partner of Applicant or Applicant is at least 10 percent owned by one or more minority individuals 10

TOTAL \_\_\_\_\_

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

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 19:908 (July 1993), LR 21:

V. Jean Butler  
 President

9505#014

**DECLARATION OF EMERGENCY**

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

1995 Night Shrimping

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act, and R.S. 56:6(25)a, the Wildlife and Fisheries Commission hereby finds that an imminent peril to the public welfare exists and accordingly adopts the following emergency rule:

The Wildlife and Fisheries Commission does hereby prohibit shrimping between official sunset and official sunrise in the inside waters as described in R.S. 56:495 from the western side of the Atchafalaya River Channel out to Eugene Island to the western shore of Vermilion Bay, not to include Southwest Pass at Marsh Island south of a line drawn from the following points:

The western side of Southwest Pass at its northwestern point to the Green Light Channel Marker Number 9, at latitude 29°36'58" longitude 92°00'21", thence northeast to Green Light Channel Marker Number 1, at latitude 29°37'34" longitude 91°59'36", thence southeast to the eastern side of Big Charles Bayou, at latitude 29°36'54" longitude 91°59'00", thence southwesterly to the western shore of Big Charles Bayou, at latitude 29°36'50" longitude 91°59'12".

This rule shall be in effect for the 1995 Spring Inshore Shrimp Season.

Perry Gisclair  
 Chairman

9505#019

## DECLARATION OF EMERGENCY

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

#### 1995 Spring Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act, which allow the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497, which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 1995 Spring Inshore Shrimp Season to open as follows:

Zone 1—that portion of Louisiana's inshore waters from the Mississippi State Line to the eastern shore of South Pass of the Mississippi River, to open at 6 a.m., May 15, 1995; and

Zone 2—that portion of Louisiana's inshore waters from the eastern shore of South Pass of the Mississippi River westward to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, to open at 6 a.m., May 15, 1995; and

Zone 3—that portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Texas State Line, to open at 6 a.m., May 29, 1995; and

In addition, the commission sets the opening of a portion of Louisiana's Territorial Waters (outside waters) from the eastern side of the Atchafalaya River Ship Channel westward to the western shore of Freshwater Bayou at 6 a.m., May 15, 1995.

Further, the commission hereby grants to the secretary of the Department of Wildlife and Fisheries, the authority to close any zone or portion of the state's waters to protect small white shrimp if biological and technical data indicate the need to do so, or if enforcement problems develop.

Perry Gisclair  
Chairman

9505#018

## DECLARATION OF EMERGENCY

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

#### Calcasieu Shrimp Season

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act, which allow the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, R.S. 56:497

which provides that the Wildlife and Fisheries Commission shall have the right to set special shrimp seasons for all or part of state waters, and a resolution adopted by the Wildlife and Fisheries Commission on February 2, 1995, which authorized the secretary of the Department of Wildlife and Fisheries to set any special seasons to harvest overwintering white shrimp in any area or zone when biological and technical data indicates the need to do so, the secretary hereby adopts the following emergency rule:

A special three-day season to harvest shrimp in Calcasieu Lake and the Calcasieu Ship Channel shall be opened at 6 a.m., Wednesday, April 26, 1995 and shall close at 12:01 a.m., Saturday, April 29, 1995.

The department's samples indicate that harvestable size white shrimp would be available in Calcasieu Lake.

Joe L. Herring  
Secretary

9505#013

## DECLARATION OF EMERGENCY

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

#### Crawfishing on the Sherburne Wildlife Management Area (LAC 76:VII.177)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:109 and R.S. 56:761, the Wildlife and Fisheries Commission hereby finds that an imminent peril to the public welfare exists and accordingly adopts the following emergency rule.

The commission finds crawfishing similar to that experienced in 1994 will negatively impact reforestation efforts, cause user conflicts and disturb wildlife. It is also possible that the loss of a valuable timber resource might occur. This Declaration of Emergency will provide for both commercial and recreational crawfishing without negatively impacting wildlife or timber resources. The commission will take the necessary steps to establish permanent rules for crawfishing on this property by means of normal rule making processes.

#### Title 76

#### WILDLIFE AND FISHERIES

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

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

#### §177. Crawfishing on Agricultural Lands Within Sherburne Wildlife Management Area

A. The Department of Wildlife and Fisheries manages, as part of Sherburne Wildlife Management Area (WMA), two agriculture units owned in fee title by the U.S. Army Corps of Engineers. These two tracts are located on the eastern portion of the Wildlife Management Area, near Ramah. Extensive land development in the form of levee

impoundments, water control structures, and reforestation is planned on both of these farms to manage favorable habitat for wildlife. Due to the high interest in crawfish harvesting on the above mentioned farms, the following measures will be put in place and enforced to:

1. minimize disturbance to wildlife;
2. protect present and future reforestation efforts;
3. prevent damage to impoundment features;
4. allow utilization of crawfish resources for both recreational and commercial interests in a manner to avoid user conflicts.

B. Persons wishing to harvest crawfish on these farms will be required to obtain a permit from the Department of Wildlife and Fisheries. Each commercial harvester is assessed a \$50 administrative fee and is allowed one helper. Permittee must be present to run traps. All persons harvesting crawfish recreationally from the ages of 16-59 must possess either a fishing license, hunting license, or a Wild Louisiana Stamp. Recreational harvesters are limited to 100 pounds per boat, per day. All crawfish harvesting will be allowed only between the hours of one-half hour before sunrise to one-half hour after sunset. Violation of any restrictions which apply to this permit will result in the permit being canceled in addition to any citations issued for the offense. The production and harvest of crawfish is incidental to water levels maintained to manage for wildlife species. Water levels will not be maintained solely for crawfish harvesting, nor is there any assurance that the water levels controlled for wildlife will yield crawfish. Guidelines are as follows:

1. North Farm. Acreage on this farm totals 800 acres. The entire farm will be impounded for waterfowl management. The eastern one-third of the property (289.7 acres) will continue to be farmed. If water conditions preclude farming operations, crawfishing activities will be restricted to watercraft without a motor. The remaining uncropped acreage (410.7 acres) will be open to crawfishing April 1 to July 31. No watercraft with a motor will be allowed. Entry into ponds for crawfishing will be at designated points only (contact the Opelousas office for the appropriate maps).

2. South Farm

a. Acreage on this farm totals 1,600 acres. This farm is divided into four units as follows.

i. Unit 1 - Closed to Crawfishing. Reforestation areas will be off limits to all crawfish harvesting activities to protect tree seedlings.

ii. Unit 2 - Crawfishing Permitted. Watercraft with motor will be allowed in this unit.

iii. Unit 3 - Crawfishing Permitted. No watercraft with a motor will be allowed in this unit for the protection of waterfowl impoundment features.

iv. Unit 4 - Crawfishing Permitted. Watercraft with a motor will be allowed in this unit.

b. Entry into all units of south farm is at designated points only, crawfish harvesting permitted from April 1 to July 31 (contact the Opelousas office for the appropriate maps).

**SPECIAL USE PERMIT  
SHERBURNE WILDLIFE MANAGEMENT AREA**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_ Driver's License No. \_\_\_\_\_ DOB \_\_\_\_\_

PERIOD OF USE: From: \_\_\_\_\_, 19\_\_ To: \_\_\_\_\_, 19\_\_

C. Description. Contact the Opelousas office for appropriate maps.

D. Special Conditions

1. Crawfish harvesting allowed from April 1 to July 31 only.

2. Motorized watercraft allowed in designated areas only.

3. Entry into farm at designated points only.

4. Crawfish harvesting only between one-half hour before sunrise to one-half hour after sunset.

5. Recreational harvesting limited to 100 pounds live crawfish per boat per day. All recreational harvesters from the ages of 16-59 must possess either a fishing license, hunting license, or Wild Louisiana Stamp.

6. Commercial harvesters are assessed a \$50 administrative fee and each permittee is allowed one helper. Permittee must be present to run traps.

7. By signing this permit, permittee agrees to abide by all special regulations. Any violation of WMA rules and regulations will result in cancellation of permit.

8. The production and harvest of crawfish is incidental to water levels maintained to manage for a diversity of wildlife species. Water levels will not be maintained solely for crawfish production and/or harvesting, nor is there any assurance that the water levels controlled for wildlife will yield crawfish.

9. \_\_\_\_\_ Recreational  
\_\_\_\_\_ Commercial Paid \_\_\_\_\_

Permit Number \_\_\_\_\_ Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:109 and R.S. 56:761.

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

Perry Gisclair  
Chairman

9505#020

**DECLARATION OF EMERGENCY**

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

Grand Bayou Reservoir Bass

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, and under the authority of R.S. 56:326.3, the Wildlife and Fisheries Commission, in order to ensure and accelerate the

establishment of black bass (*Micropterus spp.*) in John K. Kelly-Grand Bayou Reservoir, located in Red River Parish, does hereby enact the following emergency rule:

Effective May 4, 1995, it shall be unlawful to retain or possess black bass (*Micropterus spp.*) in John K. Kelly-Grand Bayou Reservoir, located in Red River Parish.

The Department of Wildlife and Fisheries has recently (March 23, 1995) stocked 100 adult black bass broodstock of the Florida strain into John K. Kelly-Grand Bayou Reservoir (Red River Parish). This stocking was made pre-spawn in an effort to introduce Florida bass genes into the reservoir at the time of impoundment. This closure will assure that the fish remain in the reservoir for at least two spawning seasons.

Failure to immediately close the reservoir to the retention or possession of black bass constitutes an imminent peril to the public welfare, as this will result in substantial losses to the Florida black bass broodstock.

Perry Gisclair  
Chairman

9505#021

# RULES

## RULE

### Department of Economic Development Real Estate Commission

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

The Louisiana Real Estate Commission has amended the existing rules and regulations of the agency: LAC 46:LXVII, Subpart 1, Chapter 47, Investigations and Hearings.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate

#### Chapter 47. Investigations and Hearings

#### §4707. Adjudicatory Proceedings

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

##### 1. Informal Adjudicatory Proceedings

a. The complaint may be concluded informally without public hearing on the recommendation of the hearing examiner and the concurrence of the executive director.

b. A Preliminary Notice of Adjudication will be issued to advise the respondent of the violation or violations alleged and to advise the respondent that the matter can be resolved informally should the respondent desire to admit to committing

the act or acts specified and submits a written request that the matter be resolved informally.

c. A hearing officer will be appointed by the executive director to conduct an informal hearing with the respondent.

d. The informal hearing will be attended by the case investigator, who will respond to questions concerning the investigation which resulted in the allegations, and the hearing examiner, who will inform the hearing officer of the administrative, jurisdictional, and other matters relevant to the proceedings. No evidence will be presented, no witnesses will be called and no formal transcript of the proceedings will be prepared by the commission. Statements made during the informal proceedings may not be introduced at any subsequent formal adjudicatory proceedings without the written consent of all parties to the informal hearing.

e. If the informal hearing results in an admission by the respondent that violations were committed as alleged, the hearing officer may enter into a recommended stipulations and consent order to include the imposition of any sanctions authorized by the Louisiana Real Estate License Law. In the written document the respondent must stipulate to having committed an act or acts in violation of the license law or the rules and regulations of the commission, accept the sanctions recommended by the hearing officer, and waive any rights to request a rehearing, reopening, or reconsideration by the commission, and the right to judicial appeal of the consent order.

f. If at the informal hearing the respondent does not admit to having committed the act or acts specified, does not accept the sanctions recommended by the hearing officer, or does not waive the specified appellate rights, the alleged violations will be referred to the commission along with a recommendation for a formal adjudicatory hearing.

g. If the respondent does execute a stipulations and consent order, the executive director shall submit the document to the commission at the next regular meeting for approval and authorization for the executive director to execute the consent order in the name of the commission.

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

i. Any consent order executed as a result of an informal hearing shall be effective on the date approved by the commission.

j. Repeal.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), amended LR 21: (May 1995).

J. C. Willie  
Executive Director

9505#029

## RULE

### Department of Economic Development Real Estate Commission

Names on Licenses, Registrations and Certificates;  
Tradenames; Symbols and Trademarks  
(LAC 46:LXVII.Chapter 21)

The Real Estate Commission has adopted the following amendments and changes to the existing rules and regulations of the agency: LAC 46:LXVII, Subpart I, Chapter 21, Names on Licenses, Registrations, and Certificates; Tradenames; Symbols; and Trademarks.

#### Title 46

#### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXVII. Real Estate

#### Chapter 21. Names on Licenses, Registrations, and Certificates; Tradenames; Symbols; and Trademarks

#### §2101. Names on Licenses, Registrations and Certificates

All licenses, registrations and certificates issued by the Louisiana Real Estate Commission will be issued in the name of the legal entity of the applicant.

1. Licenses, registrations and certificates issued to individual real estate brokers, real estate salespersons, timeshare registrants, and real estate school instructors will be issued in the name of the individual person.

2. Licenses, registrations and certificates issued to any corporation or partnership for any purpose will be issued in the identical name of the corporation or partnership as registered with the secretary of state, except as indicated in Section 2101.3. No license, registration or certificate will be issued to any corporation or partnership not registered with the secretary of state.

3. The name of any broker or salesperson whose real estate license has been revoked by the commission, with the revocation becoming final and effective on or after February 1, 1995, which in any way represents that the former broker or salesperson is licensed by the commission to conduct real estate activities requiring licensing in Louisiana, shall not be utilized on any license issued by the commission.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21: (May 1995).

#### §2103. Tradenames

Licenses, registrations and certificates issued by the commission will not indicate a tradename of the licensee, registrant or certificate holder unless the tradename is registered with the secretary of state and a copy of the registration is on file at the commission.

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21: (May 1995).

#### §2105. Symbols and Trademarks

A. Licensees, Registrants and Certificate Holders are prohibited from using any symbol or trademark in connection with any license, registration or certificate issued by the commission without first registering the symbol or trademark with the secretary of state and placing a copy of the registration on file with the commission.

#### B. Repeal

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December, 1989), amended LR 21: (May 1995).

#### §2107. Transitional Licensing and Registration of Documents

#### Repeal

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Real Estate Commission, LR 3:398 (October 1977), amended LR 4:479 (December 1978), amended by the Department of Economic Development, Real Estate Commission, LR 15:1057 (December 1989), LR 21: (May 1995).

J. C. Willie

Executive Director

9505#028

## RULE

### Board of Elementary and Secondary Education

#### Bulletin 741—Expulsion of Students

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education amended Bulletin 741, Louisiana Handbook for School Administrators, to include additional procedures and guidelines for expulsion of students.

#### Expulsion Guidelines

#### Additions per House Bill 173

#### Guidelines for Admittance or Readmittance

1. No student who has been expelled from any public or nonpublic school outside the state of Louisiana or any nonpublic school within Louisiana for committing any offenses enumerated in R.S. 17:416 shall be admitted to any public school in the state except upon the review and approval by the governing body of the admitting school. Refer to R.S. 17:416.

2. No student who has been expelled pursuant to the provisions of R.S. 17:416(C)(2) shall be readmitted to a public school in the school system in which he was expelled without the expressed approval of the school board of such school system. Refer to R.S. 17:416(C)(2).

#### **Record of Expulsions**

Any student who has been expelled from any public or nonpublic school within or outside the State of Louisiana shall provide to any public school or school system in the state to which the student is seeking admission, information on the dates of any expulsion and the reason(s) for which the student was expelled. Additionally, the transfer of a student's records by any public school or school system in the state to any other public or nonpublic school or school system shall include information on the dates of any expulsions and the reason or reasons for which the student was expelled. Refer to R.S. 17:416(B)(3).

Carole Wallin  
Executive Director

9505#044

### **RULE**

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

##### **Bulletin 741—Substance Abuse Prevention Education**

In accordance with the Revised Statutes 49:950 et. seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education amended Standards 2.090.01 and 2.096.01 of Bulletin 741, Louisiana Handbook for School Administrators, as printed below:

##### **Standard 2.090.01**

Elementary schools shall provide a minimum of 16 contact hours of substance abuse prevention education each school year. Instruction shall be provided within a comprehensive school health program and in accordance with the state substance abuse curriculum (Bulletin 1864, Volume 1) or through substance abuse programs approved by the State Board of Elementary and Secondary Education.

Procedural Block: Refer to R.S. 17:402-5

##### **Standard 2.096.01**

Secondary schools shall provide a minimum of eight contact hours of substance abuse prevention education each school year for grades 10-12 and 16 hours for grade 9. Instruction shall be provided within a comprehensive school health program and in accordance with the state substance abuse curriculum (Bulletin 1864, Volume 1) or through substance abuse programs approved by the State Board of Elementary and Secondary Education.

Procedural Block: Refer to R.S. 17:402-5

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:404(B)(1).

Carole Wallin  
Executive Director

9505#043

### **RULE**

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

##### **Bulletin 1525—Personnel Evaluation Guidelines**

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education amended pages 27, 28, and 29 of the Guidelines for Personnel Evaluation, Bulletin 1525, Revised 1992, 1994.

##### **Bulletin 1525—Personnel Evaluation Guidelines**

\* \* \*

The observation process must conform to the guidelines listed below:

1) The LEA must specify who will conduct the observation(s). The evaluator must conduct at least one of the required number of observation(s).

2) The LEA must specify how often observations will occur.

3) The evaluator of each teacher or administrator shall conduct a pre-observation conference during which the teacher or administrator shall provide the evaluator with relevant information.

4) The LEA must notify the evaluatee in advance when observation(s) will occur. LEAs must define types, if different types of observations are used.

5) The LEA must specify how the post-observation conference will be conducted.

6) The LEA must specify how copies of the completed observation forms will be disseminated and filed.

7) The LEA must specify how intensive assistance, if necessary, will be initiated following the observation procedures.

##### **Instructional Personnel**

In addition to the aforementioned guidelines, the following observation procedures are for instructional personnel.

Classroom observation is a critical aspect of the teacher evaluation process. The evaluator conducts observations that are of sufficient duration to see the lesson begin, develop, and culminate. A pre-observation conference is conducted to review the teacher's lesson plan. A post-observation conference is arranged to discuss and analyze the lesson, as well as to prepare an observation report. The primary purpose of this report is not to rate the teacher on a scale or checklist, but rather, to reach consensus on commendations, as well as recommendations for strengthening or enhancing teaching. Follow-up classroom visits and observations are conducted to determine what impact these recommendations have had on improving the quality of the teaching-learning process in the teacher's classroom.

In this section of the LEA evaluation program description, the LEA delineates its classroom observation process for teachers.



The observation process must conform to the guidelines listed below:

- 1) Teaching is evaluated through periodic classroom observations.
- 2) A pre-observation conference is held to review the teacher's lesson plan.
- 3) Observations are of sufficient duration to see the lesson begin, develop, and culminate.
- 4) A post-observation conference is held to discuss and analyze the lesson as well as to prepare an observation report.
- 5) The primary purpose of the classroom observation is not to rate the teacher, but rather, to reach consensus on commendations, as well as recommendations to strengthen or enhance teaching.
- 6) Follow-up classroom visits and observations are conducted to reinforce positive practice and to determine how recommendations have impacted the quality of the teaching-learning process.

### Section 6.5

#### Developing the Professional Growth Plan

Periodic evaluation conferences are conducted to discuss and analyze job performance for the purpose of developing longer term (1-2 year) professional growth plans to strengthen or enhance the job performance of all certified and other professional personnel. These professional growth plans should be developed at the beginning of the evaluation period and be based on a descriptive analysis of job performance rather than only on the results of a checklist or a rating scale. Appropriate time frames must be determined in regard to these procedures. Usually such plans include two to three objectives developed collaboratively by the evaluatee and evaluator. These plans must be reviewed and updated annually. For successful, experienced personnel, these objectives may extend beyond the professional responsibilities included in the job description and may be used to explore new, untried, innovative ideas or projects. Each objective includes a plan of action to guide the evaluatee's progress, as well as observable evaluation criteria that the evaluatee and evaluator can use to determine the extent to which each objective has been achieved. The evaluation criteria should show clearly how achievement of the objective will impact the quality of the job performance.

In this section of the LEA personnel evaluation program description, the LEA delineates its process for developing the professional growth plan.

That process must conform to the guidelines listed below:

- 1) All certified and other professional personnel develop longer-term professional growth plans to strengthen or enhance their job performance.
- 2) The professional growth plan is developed at the beginning of the evaluation period. Appropriate time frames must be determined in regard to these procedures and such time frames must be given in the narrative of this subsection. The LEA must develop forms for the professional growth plan.
- 3) Professional growth plans are based on objectives developed collaboratively by the evaluatee and evaluator. The successful teacher shall not be mandated to participate in any

one specific growth activity. These plans must be reviewed and updated annually.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3902(B)(4).

Carole Wallin

Executive Director

9505#042

### RULE

#### Board of Elementary and Secondary Education

##### Bulletin 1943—Teacher Assessment

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the state Board of Elementary and Secondary Education amended Bulletin 1943, Policies and Procedures for Louisiana Teacher Assessment as stated below:

#### Amend Section III: Applicability and Timelines

A. Delete the second paragraph which reads:

"If a teacher or other educator to whom this program applies has been employed for more than 90 consecutive days in the same assignment in Louisiana public schools prior to August 1, 1994, that individual shall not be considered a "new teacher" for purposes of this program."

#### Amend Section IV: Glossary

External Assessor - amend to read:

"- an active faculty member of a college or university, a central office administrator or retired educator."

Bulletin 1943 was amended by the board as an emergency rule, effective June 23, 1994. The above amendments were also adopted as an emergency rule, effective August 25, 1994 and were necessary in order to be in conformity with Act 1 of the Third Extraordinary Session of the 1994 Louisiana Legislature.

Carole Wallin

Executive Director

9505#046

### RULE

#### Board of Elementary and Secondary Education

##### Authority for Child Nutrition Programs and Appeals Procedure for Taking Action Against a Sponsor (LAC 28:I.943)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the following appeals procedure used

by the Department of Education for taking action against a school food authority or a child and adult care food program sponsor.

Since these rules and regulations are referenced in LAC 28:I.943, this revision will also be an amendment to the *Louisiana Administrative Code*.

#### Title 28

### EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §943. Louisiana Child Nutrition Program Regulations

A. The board adopted rules and regulations for the operation of the Louisiana Child Nutrition Program. The purpose of the program is to enable child care institutions to integrate a nutritious food service with organized child care services for enrolled children. The rules and regulations are the same as those established in 7 CFR Parts 210 through 245 for the operation of the Child Nutrition Program.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with 7 CFR, 210-245.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 15:9 (January 1989), amended LR 16:297 (April 1990), LR 21: (May 1995).

See pages 203-204 of the February, 1995, *Louisiana Register* for a complete text of the regulations.

Carole Wallin  
Executive Director

9505#047

### RULES

#### Board of Elementary and Secondary Education

##### Technical Institutes Attendance 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 amended the attendance policy for technical institutes. This revision tracks the wording of the present policy except it follows the quarter system under which the institutes presently operate instead of the monthly system previously used. This amendment to the Administrative Code, Title 28 is stated below:

#### Title 28

### EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 15. Vocational and Vocational-Technical Education

##### §1523. Students

\* \* \*

##### B. Attendance Policies

\* \* \*

##### 2. Absences

a. Full-time students are subject to being suspended for nonattendance if they are absent in excess of 42 hours in a

quarter. Students enrolled less than full time will operate on a pro-rated scale on the policy according to their enrollment status.

b. A student suspended for nonattendance may register at the beginning of the next quarter. Any student suspended during two consecutive quarters shall not be allowed to register for the next quarter, but may register for the following quarter with the approval of the director.

c. Absences shall be recorded in increments of one-hour.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10)(11), R.S. 17:1997

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

Carole Wallin  
Executive Director

9505#045

### RULE

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

##### Standards of Performance for New Stationary Sources (LAC 33:III.3265, 3266) (AQ88)

(Editor's Note: A portion of AQ88, which appeared on pages 370 - 379 of the April 20, 1995 *Louisiana Register*, is being republished to correct typographical errors and to include in §3265, the "Monitoring of Emissions and Operations" paragraph which proposed that alternate monitoring schemes shall be submitted to the administrative authority for consideration.)

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part III. Air

##### Chapter 31. Standards of Performance for New Stationary Sources

##### Subchapter J. Standards of Performance for Petroleum Refineries (Subpart J)

##### §3265. Monitoring of Emissions and Operations

A.1. - 6.a. ...

b. The performance evaluations for this reduced sulfur and oxygen (O<sub>2</sub>) monitor under LAC 33:III.3125.C shall use Performance Specification 5 of CFR part 60 appendix B, except the calibration drift specification is 2.5 percent of the span value rather than five percent. When Method 15 (LAC 33:III.6063) or Method 15A of 40 CFR part 60, appendix A and Method 3 (LAC 33:III.6009) yields O<sub>2</sub> concentrations below 0.25 percent during the performance specification test, the O<sub>2</sub> concentration may be assumed to be zero and the reduced sulfur CEMS need not include an O<sub>2</sub> monitor.

7.a. - b. ...

c. The performance evaluations for this SO<sub>2</sub> (and O<sub>2</sub>) monitor under LAC 33:III.3125.C shall use Performance Specification 5 of CFR part 60 appendix B. Method 15 (LAC

33:III.6063) or Method 15A of 40 CFR part 60 and Method 3 (LAC 33:III.6009) shall be used for conducting the relative accuracy evaluations.

8. - 11. ...

12. The owner or operator shall follow appendix F Procedure 1 of CFR part 60, including quarterly accuracy determinations and daily calibration drift tests, for the continuous monitoring systems under Subsection A.8, 9, and 10 of this Section.

13.a. - b. ...

c. other monitoring systems as approved by the administrative authority\*.

14. Proposed alternate monitoring schemes shall be submitted to the administrative authority\* for consideration.

B. - E.4.c. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:372 (April 1995), repromulgated LR 21: (May 1995).

### §3266. Test Methods and Procedures

A. - B.1. ...

2. Method 5B or 5F of 40 CFR part 60 is to be used to determine particulate matter emissions and associated moisture content from affected facilities without wet flue gas desulfurization (FGD) systems; only Method 5B of 40 CFR part 60 is to be used when samples are taken downstream of wet FGD systems. The sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times may be approved by the administrative authority when process variables or other factors preclude sampling for at least 60 minutes.

3. - 4. ...

C.1. - 3. ...

D. The owner or operator shall determine compliance with the CO standard in LAC 33:III.3263 by using the integrated sampling technique of Method 10 of 40 CFR part 60, appendix A to determine the CO concentration (dry basis). The sampling time for each run shall be 60 minutes.

E. - F.2. ...

3. The oxygen concentration used to correct the emission rate for excess air shall be obtained by the integrated sampling and analysis procedure of Method 3 (LAC 33:III.6009). The samples shall be taken simultaneously with the SO<sub>2</sub>, reduced sulfur, and H<sub>2</sub>S or moisture samples. The SO<sub>2</sub>, reduced sulfur, and H<sub>2</sub>S samples shall be corrected to zero percent excess air using the equation in Subsection H.6 of this Section.

G. - I.11. ...

12. An owner or operator may, upon approval by the administrative authority\*, use an alternative method for determining compliance with LAC 33:III.3264.C.2, as provided in LAC 33:III.3115.B. Any requests for approval must include data to demonstrate to the administrative

authority that the alternative method would produce results adequate for the determination of compliance.

J. - K.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:374 (April 1995), repromulgated LR 21: (May 1995).

James B. Thompson, III  
Assistant Secretary

9505#057

## RULE

### Department of Health and Hospitals Board of Examiners of Professional Counselors

#### Supervised Experience (LAC 46:LX.705)

The Licensed Professional Counselors Board of Examiners, under the authority of the Louisiana Mental Health Counselor Licensing Act, R.S. 37:1101-1115, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., amends the following rule governing the practice of mental health counseling in the state of Louisiana.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LX. Professional Counselors, Board of Examiners Chapter 7. Requirements for Licensure

#### §705. Supervised Experience

##### A. Supervision Requirements

1. Supervision is defined as assisting the counselor intern in developing expertise in methods of the professional mental health counseling practice and in developing self-appraisal and professional development strategies. Supervision must comply with standards as set by the board.

2. Pursuant to R.S. 37:1107(A) an applicant for license must document a minimum of 3,000 hours of supervised mental health counseling experience during a minimum of two years post-master's degree experience. Five hundred hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the master's degree, provided that such hours are clearly related to the field of mental health and provided that in no case the applicant has less than 2,000 hours of supervised experience.

a. Based on the above, the board has broken down the required 3,000 hours of counseling experience in the following manner:

- i. a minimum of 1,900 hours (up to 2,900 hours) in direct client contact - individual or group counseling.
- ii. a maximum of 1,000 hours in additional client contact, counseling related activities (i.e., case notes, staffing,

case consultation, or testing/assessment of clients) or education at the graduate level in the field of mental health as defined above.

iii. a minimum of 100 hours of face-to-face supervision by a board approved supervisor.

b. The board recommends one hour of supervision for every 20 hours of direct client contact as outlined in Clause i. Supervision may not take place via mail, or telephone. Telephone or mail contacts with supervisor may be counted under Clause ii (i.e., consultation), however, it cannot be counted as face-to-face supervision as defined in Clause iii.

3. Acceptable modes for supervision of direct clinical contact are the following:

a. Individual Supervision. The supervisory session is conducted by an approved supervisor with one counselor intern present.

b. Group Supervision. The supervisory session is conducted by an approved supervisor with no more than five counselor interns present.

4. At least 100 hours of the counselor intern's direct clinical contact with clients must be supervised by an approved supervisor or supervisors, as defined below.

a. At least 50 of these 100 hours must be individual supervision as defined above. The remaining 50 hours of these 100 hours may be either individual supervision or group supervision as defined above.

b. A supervisor may not supervise more than five counselor interns at any given time.

5. The counseling activities of the counselor intern must be performed pursuant to the supervisor's order, control, oversight, guidance and full professional responsibility. The supervisor must read and co-sign all written reports including treatment plans and progress notes prepared by the counselor intern when in a private practice setting with the supervising LPC. Reading and co-signing of reports in some agency settings may not be possible, however, this does not exempt the supervisor from responsibility for the clients under the counselor intern care in such agency settings. The counselor intern will remain under the full professional responsibility and supervision of the supervisor until he/she is fully licensed.

6. The process of supervision must encompass multiple strategies of supervision, including regularly scheduled live observation of counseling sessions (where possible) and review of audiotapes and/or videotapes of counseling sessions. The process may also include discussion of the counselor intern's self-reports, microtraining, interpersonal process recall, modeling, role-playing, and other supervisory techniques.

\* \* \*

#### B. Qualifications of a Supervisor

1. Those individuals who may provide supervision to counselor interns must meet the following requirements:

a. Licensure Requirements. The supervisor must hold a Louisiana license as a Licensed Professional Counselor.

b. Counseling Practice. The supervisor must have been practicing mental health counseling in their setting (i.e., school, agency, private practice) for at least five years. Two of the five years experience must be post licensing experience.

\* \* \*

d. One year of documented experience in the supervision of mental health counseling.

\* \* \*

#### C. Responsibility of Applicant under Supervision

\* \* \*

6. Supervision hours do not begin accruing until after the application for supervision has been filed and approved by the LPC Board.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Professional Counselors, LR 18:269 (March 1992), amended LR 21: (May 1995).

Peter Emerson, Ed. D.  
Board Chair

9505#007

### RULE

#### Department of Health and Hospitals Board of Medical Examiners

#### Temporary Permit for International Medical Graduates (LAC 46:XLV.125,411)

The State Board of Medical Examiners, pursuant to the authority vested in the board by R.S. 37:1270(A), 37:1270(B) (6), and 37:1275, and in accordance with applicable provisions of the Administrative Procedure Act, has adopted a new section in its rules, making a Graduate Education Temporary Permit available to qualified international medical graduates (graduates of foreign medical schools) to permit their enrollment and participate in accredited postgraduate medical education training programs at Louisiana medical schools and other institutions offering accredited postgraduate programs, LAC 46:XLV, Subpart 1, Chapter 3, §411. The board has concurrently amended its rules prescribing fees for licenses, permit and examinations, LAC 46:XLV, Subpart 1, Chapter 1, §125.B. The rule amendments were proposed for adoption by notice of intent published on pages 1434-1436 in the December, 1994 *Louisiana Register*. In consideration of comments on the rules, the board has made a single technical amendment to one of the conditions for renewal of the permit, appearing at §411.F.1 of the proposed rule. The text of the final rules, as amended by the board, is set forth below.

**Title 46**  
**PROFESSIONAL AND OCCUPATIONAL**  
**STANDARDS**

**Part XLV. Medical Profession**  
**Subpart 1. General**

**Chapter 1. Fees and Costs**

**Subchapter A. General Provisions**

**§125. Licenses, Permits and Examination**

\* \* \*

B. For processing applications for permits of the type indicated, the following fees shall be payable to the board:

- |  |       |
|--|-------|
| 1. Graduate medical education temporary permit | \$100 |
| 2. Visiting physician permit                   | \$50  |
| 3. Short-term residency permit                 | \$50  |
| 4. Other institutional or temporary permits    | \$50  |

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 37:1270 and 37:1281.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 10:906 (November 1984), amended LR 17:603 (June 1991), amended LR 21: (May 1995).

**Chapter 3. Licensing and Certification of Physicians and Surgeons**

**Subchapter H. Restricted Licensure, Permits**

**§411. Graduate Education Temporary Permit**

A. In General. The board may issue a Graduate Education Temporary Permit (GETP) to an international medical graduate (a graduate of a medical school located outside of the United States, Canada and Puerto Rico) for the purpose of enrolling and participating in an accredited program of postgraduate medical education (residency or fellowship) at a Louisiana medical school, college or other accredited medical institution, upon documentation of the qualifications, satisfaction of the procedural requirements and compliance with the conditions and limitations prescribed by this section.

B. Qualifications for Permit. To be eligible for a GETP, an international medical graduate (IMG) shall:

1. be at least 21 years of age;
2. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the Commissioner of the Immigration and Naturalization Service (INS) of the United States pursuant to the Immigration and Nationality Act and the commissioner's regulation thereunder, as evidenced by an exchange visitor (J-1), temporary worker (H-1B) or immigrant visa, or INS-issued or approved work permit or by a pending application for such visa or permit;
3. be of good moral character, as defined by §303.A.3;
4. possess a doctor of medicine or equivalent degree duly issued and conferred by a medical school or college listed, at the time the degree was awarded, in the then-current edition of the *World Directory of Medical Schools* published by the World Health Organization; and
5. possess the Standard Certificate of the Educational Commission for Foreign Medical Graduates (ECFMG); and
6. have received a written commitment from an accredited Louisiana medical school, college or other

accredited medical institution formally appointing the IMG to a postgraduate medical education training program which is conducted by such medical school, college or other medical institution and which is fully accredited by (and not on probational status with) the American Council for Graduate Medical Education (ACGME), subject only to the board's issuance of a GETP to the applicant; and agreeing to furnish to the board the periodic reports required by Subsection F.2 and 3 of this Section.

C. Procedural Requirements. An application form will be supplied by the board only after the qualifications prescribed by Subsection B.6 of this Section have been documented by an original letter, signed by the director of the postgraduate training program of the Louisiana medical school, college or other accredited medical institution at which the IMG will train, certifying that the qualifications and conditions of such subsection have been met.

D. Restrictions and Limitations. An IMG holding a Graduate Education Temporary Permit issued by the board shall not participate in postgraduate medical training or engage in the practice of medicine within the state of Louisiana other than as follows:

1. During the 12 months following the effective date of an initial GETP, an IMG may participate in postgraduate medical training and engage in the practice of medicine solely at the principal location of the sponsoring medical school, college or medical institution and shall not participate in clinical rotations to or serve at institutions at any other location.

2. An IMG who is enrolled and participating in a first postgraduate year (PGY-1) medical education training program shall not assume independent responsibility for patient care or otherwise engage in the practice of medicine.

3. An IMG shall not engage in the practice of medicine, or participate in any postgraduate medical training program within the state of Louisiana, other than within the scope of the postgraduate medical training program for which such person has been approved by the board, nor other than at the medical school, college or other accredited medical institution from which such IMG holds his or her appointment, or at medical facilities affiliated with such program.

4. An IMG holding a GETP shall be subject to supervision by the supervising physicians designated by the medical school, college or medical institution at which the postgraduate medical education training program is conducted.

E. Term of Permit. Each GETP issued under this section shall expire on the last day of June in the year following the year in which it is issued. A GETP shall also expire, and automatically become null and void, effective on any date that the permittee's appointment to the designated postgraduate training program is terminated.

F. Renewal, Reissuance. A GETP which has expired may be renewed or reissued by the board for a successive one-year period, provided that:

1. not later than 24 months following the effective date of an initial GETP, permit holder has taken and successfully

passed Step 3 of the United States Medical Licensing Examination (USMLE);

2. not less than five months nor more than seven months following the effective date of an initial GETP, the director of the postgraduate program in which the permit holder is enrolled has submitted to the board written reports on the IMG's performance in such program, certifying to the board that the permit holder has performed successfully and competently in such postgraduate program;

3. not less than two months prior to the annual expiration of a GETP, the director of the postgraduate program in which the permit holder is enrolled has submitted to the board written reports on the IMG's performance in such program, certifying to the board that:

a. the permit holder has performed successfully and competently in such postgraduate program;

b. the medical school, college or other medical institution will renew the IMG's appointment for an additional year; and

c. no grounds are known which would provide cause for the board to refuse to renew or to revoke the permit holder's GETP pursuant to Subsection (H) hereof.

G. Causes for Refusal to Issue or Renew. Notwithstanding an IMG's eligibility for a GETP, or for renewal of a GETP, under the standards and criteria set forth in this section, the board may nonetheless deny issuance or renewal of a GETP for any of the causes for which it may deny licensure under R.S. 37:1285(A) or for which it may revoke a GETP pursuant to Subsection H of this Section.

H. Causes for Revocation. Upon prior notice and an opportunity to be heard in accordance with the Louisiana Administrative Procedure Act, a GETP may be revoked by the board:

1. for any of the causes specified by R.S. 37:1285(A);

2. upon a finding by the board that the permittee has failed to maintain, or did not possess at the time of application, any of the qualifications requisite to eligibility for a GETP as prescribed by this section; or

3. upon a finding by the board that the permittee has exceeded the scope of authority accorded by the GETP or otherwise violated any of the conditions, restrictions and limitations prescribed by Subsection D hereof.

I. Effect of Revocation. An IMG whose GETP has been revoked by the board pursuant to Subsection H of this Section shall not thereafter be eligible for a GETP or license to practice medicine in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A), 37:1270(B)(6), and 37:1275.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 21: (May 1995).

Delmar Rorison  
Executive Director

9505#008

## RULE

### Department of Health and Hospitals Office of Mental Health

#### Problem Gambler Information Service (LAC 48:III.901)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Mental Health, adopts the following rule.

Pursuant to R.S. 28:841, the Office of Mental Health of the Department of Health and Hospitals shall provide a 24-hour, toll-free information and referral telephone service for persons with compulsive or problem gambling behavior operated by persons with knowledge of programs and services available to assist these individuals. The Office of Mental Health shall make information regarding the program and services available to the public by providing signs to the Louisiana Lottery Corporation and requiring posting of these signs at lottery retail outlets, where gambling or gaming activities are conducted, at horse-racing tracks and at charitable bingo parlors.

#### Title 48

#### PUBLIC HEALTH-GENERAL Part III. Mental Health Services

#### Chapter 9. Client Services

#### §901. Problem Gambler Telephone Information Service

The Office of Mental Health of the Department of Health and Hospitals shall provide a 24-hour, toll-free telephone information and referral service for persons with compulsive or problem gambling behavior. The Office of Mental Health shall make information available to the public regarding the program and services by providing signs to the Louisiana Lottery Corporation. The corporation shall require posting of these signs at lottery retail outlets, where gambling or gaming activities are conducted, at horse racing tracks and at charitable bingo parlors.

The format of the sign thus provided shall read:

If gambling is causing problems in your daily life, or, if you think you may have a problem controlling your gambling, you may need help. Call this 24-hour, toll-free number to find out about services available in your area.

1-800- -

Pursuant to R.S. 36:258(C)

Assistant Secretary  
Office of Mental Health

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:841 and R.S. 36:258(C).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Mental Health, LR 21: (May 1995).

Rose V. Forrest  
Secretary

9505#053

## RULE

### Department of Health and Hospitals Office of the Secretary Medical Disclosure Panel

#### Informed Consent (LAC 48:I.2339-2345)

As authorized by R.S. 40:1299.40(E), as enacted by Act 1093 of 1990 and later amended by Act 962 of 1991, and Act 633 of 1993, the Department of Health and Hospitals, Office of the Secretary, in consultation with the Louisiana Medical Disclosure Panel, amends rules published in the December 1993 *Louisiana Register*. In recent months, the Medical Disclosure Panel has received a number of telephone calls and inquiries regarding a portion of these rules. Hence, out of an abundance of caution, the Medical Disclosure Panel is amending a portion of these rules for clarification purposes. There are no substantive changes being made from rules which were published in the December 1993 *Louisiana Register*; therefore, no fiscal impact is anticipated. Rules regarding informed consent appeared in December 1992, December 1993, June 1994, August 1994, and October 1994.

#### TITLE 48

#### PUBLIC HEALTH

#### Part I. General Administration

#### Chapter 23. Informed Consent

#### §2339. Musculo-Skeletal Procedures in the Extremities

*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.

A surgical procedure upon, or even a closed manipulation of an extremity, entails risk to a greater or lesser degree, to all major systems of that limb, and can result in varying degrees of weaknesses, deformity, paralysis, pain, numbness, limitation of motion of the joints, and amputation. Furthermore, the goals of the procedures may not be obtained, and other therapy may be found necessary.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.40(E) et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21: (May 1995).

#### §2340. Peripheral Nerve Procedures

*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.

A. Failure to improve the condition or symptoms.

B. Injury to underlying nerve(s) of plexus with resultant weakness, numbness, pain including complete anesthesia of the extremity.

C. Recurrent symptoms which might require further surgery or continuation of condition for which surgery was performed.

D. Development of chronic pain problem in the area of the nerve—for example, anesthesia dolorosa (painful numbness).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.40(E) et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 21: (May 1995).

#### §2341. Vascular Surgery

*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.

##### A. Carotid Endarterectomy

1. Thrombosis of repair (clotting).
2. Bleeding/hematoma (accumulation of blood), requiring reoperation.
3. Infection.
4. Transient or permanent stroke.
5. Nerve injury causing asymmetry of mouth, swallowing difficulty, hoarseness, weakness/atrophy and numbness of the tongue.
6. Myocardial infarction (heart attack).
7. Death.

##### B. Aortic Graft for Abdominal Aortic Aneurysm or Occlusive Disease

1. Bleeding/hematoma (accumulation of blood), requiring reoperation.
2. Infection of graft.
3. Thrombosis or emboli.
4. Limb loss.
5. Kidney failure requiring dialysis.
6. Ischemia of bowel (inadequate blood supply) with resulting loss of bowel.
7. Ischemia of spinal cord (inadequate blood supply) with resulting paraplegia (paralysis of both legs).
8. Myocardial infarction (heart attack).
9. Death.
10. Sexual dysfunction in male, including infertility.
11. Temporary dependency on a breathing machine (ventilator).

##### C. Arteriovenous Shunt for Hemodialysis (Artery Vein Fistula or Synthetic Graft)

1. Bleeding/hematoma (accumulation of blood), requiring reoperation.
2. Infection.
3. False aneurysm (damaged blood vessel with swelling and risk of rupture).
4. Recurrent thrombosis (clot).
5. Severe edema of extremity (swelling).
6. Inadequate blood supply to extremity.
7. Inadequate blood supply to nerves with resulting paralysis.

##### D. Femoral, Popliteal or Tibial Bypass Grafts

1. Bleeding/hematoma (accumulation of blood), requiring reoperation.
2. Necrosis (death) of skin around the incision with delayed healing.

3. Thrombi (clot).
4. Emboli (moving clot)—early or late.
5. Limb loss.
6. Nerve damage with permanent numbness/weakness.
7. Early or late thrombosis (late clotting) requiring reoperation.
8. Infection.
9. Myocardial infarction (heart attack).
10. Death.

**E. Lumbar Sympathectomy**

1. Injury to major artery/vein.
2. Bleeding/hematoma (accumulation of blood), requiring reoperation.
3. Injury to nerves (genitofemoral) with resulting numbness in groin and genital area.
4. Sexual dysfunction in male with resulting numbness, impotence and infertility.
5. Emboli (moving clots).

**F. Thoracic Sympathectomy by Thoracotomy or Thoracoscopy or Cervical Dorsal Sympathectomy**

1. Horner's Syndrome (drooping eyelids and constricted pupil).
2. Injury to blood vessel.
3. Pneumothorax (collapsed lung) with bleeding.
4. Infection/empyema (pus collection in chest).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.40(E) et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21: (May 1995).

**§2343. Craniotomy**

*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.

- A. Death.
- B. Paralysis or stroke.
- C. Infection or meningitis.
- D. Seizure or epilepsy.
- E. Loss of bone flap.
- F. Personality change.
- G. Loss of memory.
- H. Hemorrhage.
- I. Blindness.
- J. Loss of sense of smell or taste.
- K. Ringing in the ears or hearing loss.
- L. Problems with balance.
- M. Double or blurred vision.
- N. Numbness or sensory loss at the operative site or remote from the operative site.
- O. Blood clots.
- P. Continuation of condition for which surgery was performed.
- Q. Incontinence.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.40(E) et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21: (May 1995).

**§2345. Anterior or Posterior Diskectomy (with or without fusion)**

*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.

- A. Death.
- B. Quadriplegia.
- C. Paraplegia.
- D. Increased pain and numbness.
- E. Hoarseness.
- F. Failure of fusion (bone graft fails to stabilize).
- G. Infection.
- H. Need for additional surgery.
- I. Continuation of condition for which surgery was performed.
- J. Difficulty swallowing.
- H. Injury to esophagus.
- I. Bowel and bladder dysfunction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1299.40(E) et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 21: (May 1995).

Rose V. Forrest  
Secretary

9505#015

**RULE**

**Department of Health and Hospitals  
Office of the Secretary  
Medical Disclosure Panel**

**Informed Consent (LAC 48:I.2432-2436)**

As authorized by R.S. 40:1299.40(E), as enacted by Act 1093 of 1990 and later amended by Act 962 of 1991, and Act 633 of 1993, the Department of Health and Hospitals, Office of the Secretary, in consultation with the Louisiana Medical Disclosure Panel, is proposing to amend rules which require which risks must be disclosed under the Doctrine of Informed Consent to patients undergoing medical treatments or procedures and the Consent Form to be signed by the patient and physician before undergoing any such treatment or procedure. Additional rules regarding informed consent appeared in December 1992, December 1993, June 1994, August 1994, and October 1994.



TITLE 48  
PUBLIC HEALTH

Part I. General Administration

Chapter 23. Informed Consent

§2432. Ventriculoperitoneal Shunt Placement

*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.

- A. Malfunction of shunt due to infection.
- B. Collection of blood or fluid between brain and skull (subdural hematoma/hygroma).
- C. Headaches (low pressure syndrome).
- D. Development of condition requiring another shunt (e.g., isolated ventricle).
- E. Weakness or loss of sensation or other function due to placement of catheter.
- F. Blood clot in brain (intracerebral hematoma).
- G. Failure to absorb fluid from peritoneal cavity (fluid in abdomen).
- H. Blindness, seizures or epilepsy.
- I. Leaks in catheter and its connections.
- J. Injury to abdominal organs.
- K. Mechanical failure.
- L. Separation or migration of catheter.
- M. Infection with or without malfunction of shunt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 21: (May 1995).

§2434. Ventricular Atrial Shunt Placement

*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.

- A. All of the material risks for ventriculoperitoneal shunt placement.
- B. Heart failure.
- C. Infection in blood stream.
- D. Occlusion of large veins in chest.
- E. Blood or fluid collection around heart.
- F. Blood clots in the lung.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 21: (May 1995).

§2436. Lumboperitoneal Shunt Placement

*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.

- A. Inflammation reaction in nerves of spinal canal.
- B. Curvature of spine.
- C. Shifting/movement of brain with neurological impairment.
- D. Headaches.
- E. Spasticity.
- F. Difficulty swallowing.

G. Other neurological difficulties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Medical Disclosure Panel, LR 21: (May 1995).

Rose V. Forrest  
Secretary

9505#017

RULE

Department of Natural Resources  
Office of Conservation

Oilfield Site Restoration  
(LAC 43:I.2101-3101)

*(Editor's Note: A rule promulgated in the April 20, 1995 Louisiana Register, pps.397-400, was incorrectly codified under the LAC system. Correct Chapter and Section numbers, along with their corresponding headings, are being republished below.)*

TITLE 43

NATURAL RESOURCES

Part I. Office of the Secretary

Subpart 2. Oilfield Site Restoration

Chapter 21. Administration

§2101. Memorandum of Understanding

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21: (May 1995).

§2103. Oilfield Site Restoration Commission

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21: (May 1995).

§2105. Office of the Secretary

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21: (May 1995).

§2107. Office of Conservation-Assistant Secretary

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21: (May 1995).

Chapter 23. Oilfield Site Restoration Fund

§2301. Establishment of the Fund

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AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21: (May 1995).

**§2303. Assessment of Fees**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21: (May 1995).

**§2305. Site-Specific Trust Accounts; Accounting Method**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21: (May 1995).

**§2307. Use of the Fund**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21: (May 1995).

**Chapter 25. Oilfield Site Restoration**

**§2501. Office of the Secretary; Oilfield Site Assessments or Restoration**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21: (May 1995).

**§2503. Oilfield Site Restoration Assessments; Site-Specific Trust Accounts**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21: (May 1995).

**Chapter 27. Liability; Limitations**

**§2701. Non-Orphaned Oilfield Sites**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21: (May 1995).

**§2703. Orphaned Oilfield Sites**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21: (May 1995).

**Chapter 29. Hearings; Appeals**

**§2901. Aggrieved Parties; Right to Hearing**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21: (May 1995).

**Chapter 31. Penalties**

**§3101. Violations of this Part**

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21: (May 1995).

Jack McClanahan  
Secretary  
Ernest A. Burguières, III,  
Commissioner

9505#001

**RULE**

**Department of Public Safety and Corrections  
Office of State Police  
Charitable Gaming Division**

**Progressive Bingo (LAC 42:I.1789)**

The Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division, in accordance with R.S. 36:408, R.S. 40:1485.4, and R.S. 49:950 et seq., has amended LAC 42:I.1789.A pertaining to progressive bingo. This amendment prohibits the linking or networking of more than one location for the purpose of conducting a progressive bingo jackpot game and would also prohibit the participation by two or more licensed charitable organizations playing at different locations in any progressive bingo jackpot game.

**Title 42**

**LOUISIANA GAMING**

**Part I. Charitable Bingo, Keno, Raffle**

**Chapter 17. Charitable Bingo, Keno and Raffle**

**Subchapter F. Investigations**

**§1789. Progressive Bingo**

A. Any licensed charitable organization or organizations playing at the same location may deposit a predetermined amount of money before each licensed call bingo session into a special account in order to offer a jackpot prize. The linking or networking of more than one location, commercial or noncommercial, electronically or otherwise, for the purpose of conducting a progressive bingo jackpot game, or any form thereof, and the participation by two or more licensed charitable organizations playing at different locations in any progressive bingo jackpot game shall be prohibited.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1485.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Charitable Gaming Division, LR 20:448 (April 1994), amended LR 21: (May 1995).

Paul W. Fontenot  
Superintendent

9505#030

## RULE

### Department of Social Services Office of Rehabilitation Services

#### Voter Registration (LAC 67:VII.101)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) has revised its policy to allow for the provision of voter registration services to applicants and clients.

The purpose of this rule is to ensure that applicants/clients are afforded an opportunity to register to vote by mail.

Pursuant to the National Voter Registration Act of 1993 and Act 10 of the 1994 Third Extraordinary Session of the Louisiana Legislature, the department will provide to applicants/clients of LRS' programs the opportunity to register to vote. LRS is a designated voter registration agency.

In accordance with the guidelines of federal and state voter registration acts, regional offices shall provide to applicants and participants of these programs the opportunity to register to vote and shall further provide assistance to registrants unless the applicant declines.

Regional offices shall accept and mail, or otherwise submit, state voter registration forms to their appropriate registrar of voters.

### Title 67

### SOCIAL SERVICES

#### Part VII. Rehabilitation Services

#### Chapter 1. General Provisions

#### §101. Policy Manual

A. LRS Policy Manual provides opportunities for employment outcomes and independence to individuals with disabilities through vocational and other rehabilitation services. Its policy manual guides its functions and governs its actions within the parameters of federal law.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21: 189 (February 1995), amended LR 21: (May 1995).

Copies of the full text of the amendment may be viewed at the Office of the State Register, 1051 North Third Street, Room 512, Baton Rouge, LA, telephone (504) 342-5015.

Gloria Bryant-Banks  
Secretary

9505#035

## RULE

### Department of Treasury Board of Trustees of the Teachers' Retirement System

#### Cost-of-Living Adjustment (LAC 58:III)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Trustees of the Teachers' Retirement of Louisiana approved the following method for the distribution of the first cost-of-living adjustment for all eligible retirees, all eligible beneficiaries of deceased retirees, and eligible survivors of deceased members of the Teachers' Retirement System of Louisiana from the Employee Experience Account. This benefit adjustment is scheduled to become effective July 2, 1995.

### Title 58

### RETIREMENT

#### Part III. Teachers' Retirement Systems

Effective July 2, 1995, the Board of Trustees of the Teachers' Retirement System of Louisiana shall increase the retirement benefit or other benefit of each retiree, or the beneficiary or survivor of any member eligible to receive benefits, on account of the death of the member or retiree. This increase in benefit shall be provided from the Employee Experience Account held at the Teachers' Retirement System of Louisiana.

The increase in benefit granted from the Employee Experience Account shall be a monthly increase in the benefit of each eligible recipient as determined in accordance with the formula:

$X(A + B + C)$ , where

A = the number of years of credited service accrued at the time of retirement or death of the member or retiree;

B = the number of years since retirement or since death of the member or retiree to July 1, 1994;

C = the number of years of service credit greater than 30 years; and

X = one dollar.

No increase in benefit shall be paid to any retiree, beneficiary or survivor unless such person was receiving benefits on or prior to July 1, 1994. In addition, no increase

in benefits shall be paid to any former participant of the Deferred Retirement Option Plan unless both plan participation and employment were terminated by the plan participant on or prior to July 1, 1994.

Authority Note: R.S. 11:787(D) and 11:883.1

James P. Hadley, Jr.  
Director

9505#005

## RULE

### Department of Treasury Office of the Treasurer

#### Investment Procedures (LAC 71:I.Subpart 2)

The Department of the Treasury, through Mary L. Landrieu, state treasurer, hereby adopts a rule to govern certain matters pertaining to the investment of the monies in the Louisiana Education Quality Trust Fund (the "LEQTF" or "8(g) Fund").

The rule is to satisfy the legislative mandate contained in Section 1 of Act 136 of the 1994 Third Extraordinary Session of the Louisiana Legislature, which amends Section 2(a)(5) of Act 67 of the 1986 Regular Session, that the state treasurer promulgate rules and regulations both for the investment of the assets of the LEQTF in stocks and for the selection of outside investment managers for the LEQTF. The following rule also codifies certain practices which the Investment Division of the Treasury Department has been following since the establishment of the fund in 1986 for the investment of the assets of the LEQTF in bonds and for the handling of LEQTF Assets which are in the form of cash and cash equivalents. Finally, the rule explicitly authorizes the state treasurer to hire an investment consultant for the LEQTF and to pay the fees of such consultant from the Support Fund portion of the 8(g) Fund.

This rule complies with the statutes which are administered by the Department of Treasury, including Section 1 of Act 136 of the 1994 Third Extraordinary Session of the Louisiana Legislature, which amends Section 2(a)(5) of Act 67 of the 1986 Regular Session, as well as with all other provisions of Act 67 of 1986.

### Title 71 TREASURY

#### Part I. Treasurer

#### Subpart 2. Depository Control and Investment Education Quality Trust Fund Investment Procedures

In accordance with the provisions of R.S. 17:3803(c), there has been established within the state treasury as a special permanent trust fund the Louisiana Education Quality Trust Fund (the "LEQTF"), for the benefit of the State Board of Elementary and Secondary Education and the Board of Regents (the "beneficiaries").

#### I. Goals for Investment of LEQTF Assets

In the management of the assets of the LEQTF (the "assets"), the state treasurer has established the following goals (the "goals"):

1. preservation of the assets;
2. provision of income in a stable and predictable manner to the beneficiaries; and
3. enhancement of the market value of the assets.

#### II. Investment Responsibility for the Assets

The state treasurer, through the Investment Division of the State Treasury, shall invest the assets in accordance with applicable law and regulation.

1. State Treasurer's LEQTF Investment Advisory Panel
  - a. The state treasurer shall establish the state treasurer's LEQTF Investment Advisory Panel (the "advisory panel") to:
    - i. advise the state treasurer generally regarding the investment of the assets, including assisting in the development of investment policy for the assets; and
    - ii. to perform such other duties related to advising the state treasurer regarding the investment of the assets as the state treasurer may from time to time request or deem necessary or advisable.
  - b. Membership; Composition; Terms. The advisory panel shall have at least seven but no more than 15 members, and be composed of, among others who may be chosen by the state treasurer, at least one representative of each of the beneficiaries, as well as at least one representative each from the academic and business communities, and at least one investment professional. Members of the advisory panel shall serve on a voluntary basis at the pleasure of the state treasurer. The state treasurer shall serve as the chair of the advisory panel.
  - c. The advisory panel will meet annually in October to review investment policy and performance, make recommendations, and to take up all business as appropriate, and shall meet at any other time when and if called to order by the state treasurer. All meetings of the advisory panel shall be conducted in accordance with the law applicable to public meetings of an official body, as that law may be in effect from time to time.

2. Selection of Outside Investment Manager for the Assets. The state treasurer may select, through a request for proposal process using strict selection criteria based on sound industry principles, one or more outside investment managers to invest some or all of that portion of the assets that are eligible to be invested in equity securities. If the state treasurer chooses any outside investment manager as a result of such a process, the choice, and any contract with such manager, shall be ratified and approved by a majority of the members present at a regular meeting of the State Bond Commission.

3. Investment Consultant. From time to time, or on a continuing basis, the state treasurer may retain the services of an investment consultant for the LEQTF for the purposes of investment assistance, including, but not limited to, assistance in the following:

- a. establishing the appropriate allocation of the assets;

- b. determining appropriate investment manager styles;
- c. conducting investment manager searches;
- d. evaluating performance of investment manager(s).

### III. Investment of the Assets in Equity Securities

The state treasurer, by Section 2(a)(5) of Act 67 of the 1986 Regular Session of the Legislature ("Act 67"), as amended by Act 136 of the 1994 Third Extraordinary Session, is authorized to invest as much as 35 percent of the market value of the assets in certain stocks ("equity securities"), and to promulgate rules governing such investment. The following rules shall apply to the investment of the assets in equity securities:

1. The prudent investor standard or rule shall govern all investments of the assets. The prudent investor standard shall be the standard of care against which actual investment decisions with regard to the assets made by any person or entity investing all or any portion of the assets are judged.

2. The state treasurer shall allocate assets to be invested in equity securities in an amount calculated on the last day of each fiscal year when added to any assets already invested in equity securities that fall within the range of the market value of the assets for the applicable fiscal year as set out in the following table:

FY '95 - '96	5% to 7%
FY '96 - '97	10% to 14%
FY '97 - '98	15% to 21%
FY '98 - '99	20% to 28%
FY '99 - '00 and after	25% to 35%

For the purposes of determining the dollar amount of assets which must be invested in equity securities, the market value of the assets shall be the market value on the last day of the fiscal year immediately prior to the fiscal year in which the assets are to be allocated to be invested in equity securities.

3. The assets invested in equity securities shall not exceed an amount equal to 5 percent of the ownership of any entity or company.

4. No individual investment manager managing a portfolio of equity securities which form a part of the assets shall be permitted to concentrate more than 25 percent of the market value of that portfolio in any single industry.

5. All investment managers managing any portfolio which is part of the assets are prohibited from using the assets to engage in any of the following activities:

- a. the purchase of stock warrants;
- b. the purchase of any stock on margin;
- c. the short sale of any security;
- d. the purchase of any direct interest in oil, gas or other mineral exploration program;
- e. private or direct placement of any kind;
- f. direct ownership of real estate or real estate investment trusts;
- g. direct or indirect ownership of collectibles (including coins, stamps, or art);
- h. direct investment in the equity securities of the LEQTF custodian bank(s), investment advisor(s), or the parent company of any of them;

i. other investments which may be restricted or which may not be authorized by applicable law or rule from time to time.

### IV. Investments of the Assets in Bonds

The state treasurer, by Section 2(a)(4) of Act 67, is authorized to invest the assets in marketable fixed income securities ("bonds"). The following rules shall apply to the investment of the assets in bonds:

1. Assets shall be invested in bonds which have been selected after consideration of the total return on such investment, including interest income and capital appreciation/loss.

2. Investment of the assets in bonds should be done so that the contents of each portfolio under management is diversified by maturity, security, sector and credit quality.

3. Each portfolio of bonds forming a part of the assets may be actively managed.

4. The total portfolio of bonds which form a portion of the assets shall not contain a concentration of more than 10 percent of any issuer's securities (valued at cost of bonds compared to market value of total portfolio), except securities which are direct obligations of the U.S. Treasury or any U.S. agency.

5. All investment managers managing any portfolio of bonds which forms a part of the assets are restricted from using the assets to engage in any of the following activities:

- a. the purchase of bonds on margin;
- b. the short sale of any bond;
- c. private or direct placement of any kind;
- d. the purchase of debt securities of the custodian bank(s), investment manager(s) or their parent or any subsidiaries, or with any entity which is a part to a contractual relationship with the state treasurer or the LEQTF;
- e. direct loans or extension of lines of credit;
- f. the purchase of foreign bonds;
- g. direct purchases of single family or commercial mortgages;
- h. the purchase of collateralized mortgage obligation derivatives;
- i. other investments which may be restricted or which may not be authorized by applicable law or rule from time to time.

### V. Investment of Cash and Cash Equivalents

Any portion of the assets which is cash or the equivalent of cash ("LEQTF Cash") may be invested in a short-term investment fund (STIF) maintained for the LEQTF. All securities held in such STIF must be of the type permitted by applicable law as eligible for investment by the state treasurer. LEQTF Cash may also be invested in commercial paper rated in the two highest credit quality classes of Moody's, Inc. (P1 or P2) or of Standard & Poor's (A1 or A2).

### VI. Measurement of Performance of Investments; Evaluation of the LEQTF

A. The investment performance of the assets shall be measured quarterly on the calendar quarter by a professional and independent organization which is in the business of performing such measurements and which is not affiliated with

any firm or entity which advises the state treasurer on the investment of the assets or which has any responsibility for managing any portion of the assets. All measurement shall be in compliance with the Association for Investment Management and Research performance presentation standards.

**B. Annual Evaluation of Performance of the LEQTF.** The state treasurer shall cause an evaluation of the LEQTF at least annually. This evaluation shall cover all aspects of the investment of the assets, including an evaluation of the investment results of the total fund, results of each class of asset, results of any and each investment manager, as well as of adherence to applicable law, rules and guidelines. This evaluation shall be made in accordance with sound review criteria and any benchmarks established by the state treasurer for evaluating investment performance. Specific investment performance benchmarks for the LEQTF shall include, but not be limited to, the following (in addition to any other provision required by law or rule):

1. **Common Stocks.** An annualized total return equal to or greater than the Standard & Poor's 500 Index net of investment management fees, custodial fees, and transaction costs.

2. **Bonds.** An annualized total return equal to or greater than the Lehman Brothers Government Bond Index net of investment management fees, custodial fees, and transaction costs.

## **VII. Selection of Outside Investment Managers**

**A. Minimum Requirements for Outside Investment Managers.** Each investment manager chosen to manage any assets must be a registered investment advisor and in good standing with the Securities and Exchange Commission under the Investment Advisors Act of 1940, or, if a bank, in good standing with the appropriate federal and/or state regulatory officials.

**B. Required Information.** As a part of the information obtained from investment manager(s) proposing to become managers of any assets, such manager must provide five consecutive years of verifiable performance rates of return calculated on a time-weighted basis. These performance numbers must be based on a composite of fully discretionary accounts with a similar investment style and be reported net and gross of investment management fees.

**C. Compensation Basis.** Investment managers shall be compensated on a basis point fee as a percentage of assets contracted to manage.

**D. Contract Provisions.** Each contract which the state treasurer enters with an outside investment manager for managing the investment of the assets must contain, at a minimum, the following (in addition to any other provisions otherwise required by applicable law or rule in such contracts):

1. The investment manager shall manage the LEQTF assets under its care, custody or control in accordance with applicable federal and Louisiana law, regulations and rules, as well as with the goals and any investment policies or procedures which the state treasurer may have established from time to time.

2. Investment managers shall be evaluated by comparison to managers of like investment style or strategy.

3. The contract shall contain an acknowledgement by the investment manager of its fiduciary responsibility to the beneficiaries.

4. Investment managers shall notify the state treasurer immediately of any material matters or changes pertaining to the investment of the LEQTF, as well as any material changes of staff and/or ownership of the firm.

5. Investment managers shall make a presentation on the status and performance of the assets managed to the state treasurer and, if asked, to the advisory panel at least annually, and may be required to appear more frequently if deemed appropriate by the state treasurer. As a part of this presentation, the investment manager must provide written reports on, and be prepared to discuss, the following:

a. portfolio goals and objectives;

b. financial markets and economic outlook;

c. portfolio performance;

d. transactions, including brokerage;

e. accounting for dispersions between results of the assets managed and those assets of the LEQTF or of other entities managed by investment managers of similar or like style and strategy.

6. Investment managers shall submit quarterly a written report to the state treasurer detailing investment performance, financial markets and economic outlook, and accounting of dispersions from the benchmarks established by the state treasurer.

7. Investment managers shall be paid in arrears on a quarterly basis.

## **VIII. Investment Consultants**

**A. Method of Selection.** Should the state treasurer retain the services of an investment consultant, the treasurer shall choose a firm or individual to serve as an investment consultant for the LEQTF in accordance with all applicable Louisiana laws and rules regarding the process of choosing and contracting with professionals and consultants.

**B. Minimum Criteria.** Any investment consultant chosen must have at least five years of experience consulting accounts with assets greater than \$250 million as well as experience conducting investment manager searches and performance measurement for public funds with total assets greater than \$250 million.

**C. Payment of Fees.** Investment consultants shall be paid in arrears on a quarterly basis. All consulting fees shall be paid from the assets of the Support Fund.

**D. Disclosure of Affiliations.** Any consultant who is a broker/dealer or affiliated with a broker/dealer or investment manager must disclose the nature of the relationship. The investment consultant shall not receive compensation of any kind from any investment manager contracted by the state treasurer for management of the LEQTF.

Mary L. Landrieu  
State Treasurer

9505#031

**RULE**

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

**Commercial Fisherman's Sales Card; Dealer Receipt Form  
(LAC 76:VII.201)**

The secretary of the Department of Wildlife and Fisheries hereby amends the full implementation date of the Dealer Receipt Form from January 1, 1995 to January 1, 1996.

**Title 76**

**WILDLIFE AND FISHERIES**

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

**Chapter 2. General Provisions**

**§201. Commercial Fisherman's Sales Card; Dealer Receipt Form**

\* \* \*

F. Effective date of Subsections A and B of this Section is upon publication in the *Louisiana Register*. Effective date for Subsections C, D and E of this Section will be January 1, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:303.7(B) and 306.4(E).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 18:81 (January 1992), repromulgated LR 18:198 (February 1992), amended LR 20:323 (March 1994), amended Department of Wildlife and Fisheries, Office of Fisheries, LR 21: (May 1995).

Joe L. Herring  
Secretary

9505#023

**RULE**

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

**Commercial Fisherman's Sales Report Form  
(LAC 76:VII.203)**

The secretary of the Department of Wildlife and Fisheries hereby amends the full implementation date of the Commercial Fisherman's Sales Report Form from January 1, 1995 to January 1, 1996.

**Title 76**

**WILDLIFE AND FISHERIES**

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

**Chapter 2. General Provisions**

**§203. Commercial Fisherman's Sales Report Form**

\* \* \*

D. The effective date of this Section is January 1, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:345(B).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 18:82 (January

1992); repromulgated LR 18:198 (February 1992), amended LR 20:323 (March 1994), amended Department of Wildlife and Fisheries, Office of Fisheries, LR 21: (May 1995).

Joe L. Herring  
Secretary

9505#022

**RULE**

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

**Eagle Lake Black Bass (LAC 76:VII.169)**

The Wildlife and Fisheries Commission hereby amends the following rule on black bass (*Micropterus spp.*) on Eagle Lake located east of the Mississippi River in Madison Parish, Louisiana.

**Title 76**

**WILDLIFE AND FISHERIES**

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

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

**§169. Black Bass Regulations, Eagle Lake**

The size regulation for black bass (*Micropterus spp.*) on Eagle Lake located east of the Mississippi River in Madison Parish, Louisiana is as follows:

It shall be unlawful to take or possess, while on the water or while fishing in the water, black bass less than 14 inches total length on Eagle Lake, located east of the Mississippi River in Madison Parish, Louisiana. This rule will expire at midnight, April 2, 1996.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 325(C), 326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 19:909 (July 1993), amended LR 21: (May 1995).

Perry Gisclair  
Chairman

9505#024

# NOTICES OF INTENT

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

#### Bulletin 746—Elementary and Secondary Certification Revisions

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 revisions to Bulletin 746, Louisiana Standards for State Certification of School Personnel, as recommended by the Department of Education, that will change the certification process for elementary and secondary education.

These revisions were adopted as an emergency rule, effective March 23, 1995 and printed in full in the April, 1995 issue of the *Louisiana Register*.

In addition to the *Louisiana Register*, these revisions may be seen in full in the Bureau of Higher Education and Teacher Certification, State Department of Education, or in the Office of the State Board of Elementary and Secondary Education located in the Education Building in Baton Rouge, LA.

Interested persons may submit comments until 4:30 p.m., July 9, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin  
Executive Director

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Bulletin 746—Elementary and Secondary Certification Revisions

#### 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 \$70. 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 certification of elementary and secondary teachers who completed or will complete programs for which the grade designation was changed in 1989 will be amended to reflect the elementary (1-8) or secondary (7-12) grade levels in effect prior to the 1989 change. In many cases, the proposed rule will eliminate the requirement that teachers complete additional college course work for continued employment this fall.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will increase the employment opportunities for many teachers and will provide school systems greater flexibility in the placement of teachers at different grade levels in the schools.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9505#041

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

#### Bulletin 1196—Food and Nutrition Program (LAC 28:I.913)

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 1196, Food and Nutrition Programs, Policies of Operation. This bulletin is referenced in the Administrative Code, Title 28 as noted below.

#### Title 28

#### EDUCATION

#### Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans §913. School Food Service Standards and Regulations Bulletin 1196

1. Bulletin 1196, Food and Nutrition Programs, Policies of Operation, Revised 1995 is adopted, as revised.

2-3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:192(A).

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

This bulletin may be seen in its entirety in the Office of the State Register located on the fifth floor of the Capitol Annex, and in the Bureau of Food and Nutrition Services, State Department of Education, or in the Office of the State Board of Elementary and Secondary Education located in the Education Building in Baton Rouge, LA.

This revised Bulletin 1196, Food and Nutrition Program, Policies of Operation, Revised Edition, supersedes the document advertised as a notice of intent in the August, 1994 issue of the *Louisiana Register*.



Interested persons may submit comments on the proposed policies/regulations until 4:30 p.m., May 9, 1995 to: Eileen Bickham, State Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Carole Wallin  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Bulletin 1196—Food and Nutrition Program**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The revision of the costing formula for school system employee meals will generate an increase of \$61,000 income to the local school food service funds in the three school systems which are currently charging school employees less than the average meal cost. This increase in revenue will result in an increase of local expenditures the same amount.

The revised Bulletin 1196 includes a new Cafeteria Enhancement section which allows School Food Service funds to be used to upgrade cafeterias. In the past, the general fund had to absorb this expense. A minimal savings by local systems will occur due to changing some monthly reports to annual reports.

The implementation cost for FY 1994-95 will be for printing and mailing to school food authorities which is approximately \$708.75. The estimated expense will be provided by FY 1994-95 federal funds. No additional appropriation will be required. There is no implementation cost for state or local agencies other than printing and mailing of the revised bulletin.

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 will be an increase of \$61,000 in local government collections in three school systems.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The cost for school personnel in the three school systems which are currently charging school employees less than the average meal cost is expected to be \$61,000.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There will be no effect on competition and employment.

Marlyn Langley  
Deputy Superintendent  
Management and Finance  
9505#040

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

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

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.907 (AQ121).

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

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

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

**§907. Repealed (Reserved)**

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

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

A public hearing will be held on June 29, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ121. Such comments should be submitted no later than July 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810 or to FAX (504)765-0486.

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

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

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs (savings) will accrue to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will not be any effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will not be any cost and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There will not be any effect on competition and employment.

Gus Von Bodungen  
Assistant Secretary  
9505#060

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Glycol Dehydrators (LAC 33:III.2116)(AQ118)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division Regulations, LAC 33:III.2116 (AQ118).

The proposed amendment to the glycol dehydrator rule clarifies the requirement for owners and operators of existing glycol dehydrators to install control devices. Secondly, the recordkeeping and reporting requirements are being changed to be more consistent with other areas of air regulations. Finally, minor editorial changes are proposed in order to improve the clarity of the rule.

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

**Title 33  
ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 21. Control of Emission of Organic Compounds  
Subchapter A. General  
§2116. Glycol Dehydrators**

\*\*\*

[See Prior Text in A-A.2]

B. Requirements. Any glycol dehydrator not exempt under Subsection C of this Section shall have a control device with the following efficiency:

1. an existing glycol dehydrator, constructed prior to October 20, 1994, shall:

a. demonstrate to the administrative authority, using methods found in Subsection D of this Section, a 70 percent or greater reduction of still-column emissions; or

b. if the control device is a condenser, annually achieve an average final exhaust temperature less than 110°F;

2. a new glycol dehydrator, constructed on or after October 20, 1994, and not subject to LAC:33.III.2115 or Chapter 51, shall ensure an 85 percent or greater reduction of still-column emissions using approved methods found in Subsection D of this Section; and

3. a glycol dehydrator using a flare or other combustion device as a primary control device shall be deemed to have equivalent efficiencies to the control efficiencies of Subsection B.1.a and 2 of this Section provided the flare or other combustion device is permitted in accordance with LAC 33:III.Chapter 5. Glycol dehydrators using a flare as a primary control device shall ensure destruction of emissions to the flare stack by maintaining the heat content of the flare gas above 300 BTU/scf (for steam assisted or air assisted flares) or above 200 BTU/scf (for unassisted flares) and by installing, maintaining, and operating according to the manufacturer's specifications a heat sensing device to detect the continuous presence of a flame.

\*\*\*

[See Prior Text in C-C.1]

2. the owner can demonstrate to the administrative authority, using method or methods found in Subsection D of this Section, that the total uncontrolled VOC emissions from the glycol dehydrator are not in excess of nine tons per year.

D. Test Methods. The emissions from glycol dehydrators affected by Subsection A of this Section shall be determined using the following methods, as appropriate:

1. rich/lean glycol mass balance using pressurized sample, for determining uncontrolled emissions;

\*\*\*

[See Prior Text in D.2-D.3]

4. conventional stack measurements using LAC 33:III:6071 and 6085 (Methods 18 and 25) for determining volatile organic compound emissions; or

\* \* \*

[See Prior Text in D.5]

E. Compliance Schedule. All facilities affected by this Section shall be in compliance as soon as practicable, but in no event later than October 20, 1996, except those facilities required to submit a Part 70 permit. Facilities required to submit a Part 70 permit shall be in compliance by October 20, 1995.

\* \* \*

[See Prior Text in F]

1. a record of the results of any testing conducted in accordance with Subsection D of this Section;
2. the date of any maintenance and repair of the required control device and the duration of uncontrolled emissions during such activities;
3. glycol units subject to Subsection B.1.b of this Section shall maintain:
  - a. a record of final exhaust temperature and time observed recorded twice a week on different days during daylight hours; and
  - b. a record of all temperature exceedances greater than or equal to 120°F, the date of each temperature exceedance, and a brief explanation describing the circumstances of the temperature exceedance; and
4. glycol units for which exemptions are being claimed shall maintain:
  - a. a record of total hours of operation on an annual basis if claiming an exemption under Subsection C.1 of this Section; or
  - b. a record of actual throughput per day and the glycol circulation rate if claiming an exemption under Subsection C.2 of this Section.

\* \* \*

[See Prior Text in G-G.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1106 (October 1994), repromulgated LR 20:1279 (November 1994), amended LR 21:

A public hearing will be held on June 29, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ118. Such comments should be submitted no later than July 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-0486.

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Glycol Dehydrators**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no costs or savings expected from this amendment to the glycol dehydrator rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No impact is expected on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No estimated costs and/or economic benefits are expected from this proposed amendment.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is not any anticipated effect on competition or employment.

Gus Von Bodungen  
Assistant Secretary  
9505#061

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Permitting Fees for Small Business  
(LAC 33:III.223)(AQ122)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division Regulations, LAC 33:III.223 (AQ122).

The current rule demonstrates that the current fee schedule is based solely on SIC code, and many small businesses are charged fees that were intended for large facilities. This rule proposes a fee for small business, where the number of employees and emission rates are taken into consideration.

The proposed permit fee schedule is for small businesses which have the following characteristics: has 20 employees or less; is independently owned; emits less than 5 tons/year of any single hazardous air pollutant and less than 15 tons/year of any combination of hazardous air pollutants; is not a major source; and does not incinerate, recycle, or recover any off-site hazardous, toxics, industrial, medical, or municipal waste; has an annual gross revenue that does not exceed \$5,000,000.

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

**Title 33  
ENVIRONMENTAL QUALITY  
Part III. Air  
Chapter 2. Rules and Regulations for the Fee System of  
the Air Quality Control Programs  
§223. Fee Schedule Listing**

FEE SCHEDULE LISTING						
Fee Number	Air Contaminant Source	SICC	Annual Comp. Determination	New Permit Application	Modified Permit Fees	
					Major	Minor
* * *						
[See Prior Text in Fee Numbers 0010-1711]						
1720 <small>*Note 15*</small>	Small Business Sources	N/A	100.00	500.00	300.00	100.00

ADDITIONAL PERMIT FEES AND ADVF FEES		
Fee Number	Fee Description	Amount
* * *		
[See Prior Text in Fee Numbers 2000-2810]		

**Explanatory Notes for Fee Schedule**

\* \* \*

[See Prior Text in Notes 1-14]

Note 15 - Applications must be accompanied by a certificate of eligibility authorized by the department's Small Business Technical Assistance Program. Final determination of a facility's eligibility is to be made by the administrative authority or his designee and may be based on (but not limited to) the following factors: risk assessment, proposed action, location, etc. For the purpose of this Chapter a small business is a facility which: has 20 employees or fewer; is independently owned; emits less than 5 tons/year of any single hazardous air pollutant and less than 15 tons/year of any combination of hazardous air pollutants; emits less than 25 tons/year of any regulated pollutant; has an annual gross revenue that does not exceed \$5,000,000; is not a major stationary source; and does not incinerate, recycle, or recover any off-site hazardous, toxic, industrial, medical, or municipal waste.

\* \* \*

[See Prior Text in Notes 16-17]

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

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

14:613 (September 1988), LR 15:735 (September 1989), LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1419 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:

A public hearing will be held on June 29, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ122. Such comments should be submitted no later than July 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-0486.

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Permitting Fees for Small Business**

**Subchapter A. General  
§3931. Reportable Quantity List for Pollutants**

Pollutant	CAS No. <sup>1</sup>	RCRA <sup>2</sup> Waste Number	Pounds
* * *			
[See Prior Text in Acenaphthene - beta-Naphthylamine]			
Natural Gas (Sweetened)			2100
* * *			
[See Prior Text in Nickel <sup>3</sup> -Endnote @]			

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This rule change lowers permit application fees for qualifying small businesses. This change will have no implementation cost.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no expected effect on revenue collections of state or local governmental units. Reducing fees for a small business is expected to be offset by increased small business compliance.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Fees from small businesses will be reduced, thus encouraging compliance with the permitting program. Current fees were intended for large facilities. By establishing a fee for small business, the number of employees and emission rates are taken into consideration.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This will provide a minor enhancement to the competitive position of the small businesses in the state.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2025(J), 30:2076(D), 30:2183(I), 30:2194(C) and 30:2204(A).  
**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:  
A public hearing will be held on June 29, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.  
All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ123. Such comments should be submitted no later than July 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX number (504)765-0486.

Gus Von Bodungen  
Assistant Secretary  
9505#058

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Reportable Quantity List for Pollutants  
(LAC 33:I.3931)(AQ123)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division Regulations, LAC 33:I.3931 (AQ123).

The existing regulation does not have a reportable quantity amount for sweetened natural gas. This rule proposes a de minimis quantity of 2100 lbs for sweetened natural gas as a reportable quantity for notification of unauthorized discharges.

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

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part I. Office of the Secretary**

**Subpart 2. Notification Regulations**

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

James B. Thompson, III  
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Reportable Quantity List for Pollutants**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will not be any implementation cost (saving) to states or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will not be any effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There will not be any costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will not be any effect on competition and employment.

Gus Von Bodungen  
Assistant Secretary  
9505#059

David W. Hood  
Senior Fiscal Analyst

NOTICE OF INTENT

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

HSWA, Non-HSWA, and RCRA Federal Package  
(LAC 33:V) (HW47)

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division regulations, LAC 33:V.Chapter 1, 3, 5, 7, 11, 15, 18, 25, 26, 28, 30, 31, 41, 43, 47, and 49 (HW47).

This rule is being proposed to cleanup existing language to bring the state in line with federal regulations for the purpose of obtaining authorization from the United States Environmental Protection Agency to administer the Hazardous Waste Program. The provisions contained in this rule are not required by a single federal regulation but by many federal regulations.

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

A public hearing will be held on June 29, 1995, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate please contact Patsy Deaville at the address given below or at (504)765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW47. Such comments should be submitted no later than July 6, 1995, at 4:30 p.m., to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA, 70884-2282 or to 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA, 70810 or to FAX (504)765-0486. Copies of this proposed regulation can be purchased at the above referenced address. You may contact the Investigations and Regulation Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW47.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 31st Street, Monroe, LA 71203; State Office

Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard West Wing, Kenner, LA 70605; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508 and also at the Office of the State Register, 1051 North Third, Room 512, Baton Rouge, LA 70802.

James B. Thompson, III  
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: HSWA, Non-HSWA, and RCRA Federal  
Package (HW47)

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
No costs to state or local governments are anticipated as a result of the implementation of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There should be no effect on revenue collections of state or local governments as a result of the implementation of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
No additional costs or economic benefits to directly affected persons or nongovernmental groups are expected from the implementation of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
Since this package is a federal package in which the provisions are equivalent to federal language and the regulated community must currently abide by the federal standards, there should be no effect on competition or employment.

Glenn A. Miller  
Assistant Secretary  
9505#065

David W. Hood  
Senior Fiscal Analyst

NOTICE OF INTENT

Firefighters' Pension and Relief Fund  
New Orleans and Vicinity

Death Benefit Payment

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity ("fund") pursuant to R.S. 11:3363(F), proposes to amend rules and regulations for the Payment of Death Benefits in accordance with the provisions of R.S. 11:3361 et seq.

I. Definitions

In connection with L.R.S. 11:3378, 3381, and related

provisions and/or when used in these rules and regulations, the following terms shall have the following meanings:

*Accumulated Contributions*—contributions made by an active firefighter through monthly salary deductions. Interest shall accrue as determined by the board.

*Active Firefighter*—one who is still actively employed and has not yet retired.

*Actuarial Equivalent of the Participant's Benefit*—the actuarial cost of furnishing a single life benefit to the participant based on his years of service and salary as defined in §3384 and other applicable statutory provisions.

*Children*—children of the participant or of the surviving spouse who are dependent upon the firefighter for support (§3378.D).

*Deferred Vested Firefighter*—one who is vested by years of service but is no longer employed as a firefighter and is not yet receiving retirement benefits, whether or not he is yet eligible by age to retire.

*Dependent or Dependent upon the Firefighter for Support*—shall mean that prior to the firefighter's death, he or she contributed 50 percent or more to the support of said dependent.

*Legal Representatives*—the person or persons designated in the first of the following classes which is applicable to the deceased firefighter in question:

- a) the surviving spouse;
- b) the surviving children;
- c) the surviving parents;
- d) if a succession has been opened, the firefighter's estate or succession;
- e) the heirs.

*Vested Firefighter*—a person who has accumulated at least 20 years of continuous service under the new system, in accordance with §3381.

*Widow*—the surviving spouse to whom the firefighter is married at the time of death.

*Widowed Mother*—a parent of either sex who has survived the deaths of both the firefighter and the other parent. (§3390).

## II. Beneficiary Designations and Election of Retirement and Death Benefits

1. At the time a firefighter elects to retire, his spouse, if any, shall be furnished a copy of his retirement application and any beneficiary designation attendant thereto.

2. Any designation of beneficiary made by a firefighter pursuant to the statute shall be made in writing by completing the applicable beneficiary designation form required by the board.

3. Whenever a retirement benefit election includes a survivor annuity in any amount, a certified copy of the said survivor's birth certificate shall be furnished as proof of age. The retiree shall keep the board advised at all times of all changes of address of himself and said beneficiary.

4. Each firefighter in the new system and any employee in the old system electing coverage in the new system shall designate a beneficiary in writing and deposit it with the Board of Trustees.

5. Any such designation of beneficiary may be changed at any time prior to retirement but such change shall have no effect until deposited in writing with the Board of Trustees.

6. If a firefighter dies without having designated a beneficiary in accordance with the statute and a benefit is payable thereunder, the applicable death benefit shall be paid to the firefighter's legal representatives as defined herein, in the order defined herein.

## III. Calculation of Death Benefits

1. If a death benefit is payable as a result of the death of an eligible participant prior to retirement, the present value of his benefit shall be calculated as if he had retired on the day before he died, except where otherwise indicated in the statute or herein.

2. The fund's actuary shall be required and authorized to calculate all benefits payable in accordance with such assumptions as he shall have incorporated into the fund's actuarial valuations and reports; and the trustees' reliance upon his calculations of the amounts of retirement and death benefits payable shall be conclusive proof of the reasonableness of the trustees' decisions in this regard.

## IV. Preretirement Death Benefits

### A. Non Duty Deaths

1. If an actively employed firefighter in the new system or one in the old system electing coverage under the new system, who is eligible by age and service to retire, should die a non duty death, and if he had been married for two years or more at the time of his death, the surviving spouse may elect one of the following death benefits:

1) The surviving spouse shall receive an annuity payable for the duration of her life and calculated as if the employee had retired prior to death. [§3385, Option 2, penultimate paragraph.] OR

2) The surviving spouse may alternatively receive a refund of the employee's accumulated contributions, in lump sum.

2. If an actively employed firefighter in the new system or one in the old system electing coverage under the new system, who is eligible by age and service to retire, should die a non duty death, and if the firefighter had been married for less than two years or was unmarried at the time of his death, the designated beneficiary may elect one of the following death benefits:

1) The designated beneficiary shall receive an annuity payable for the duration of his or her life and calculated as if the employee had retired prior to death. [§3385, Option 2, penultimate paragraph.] OR

2) The designated beneficiary may alternatively receive a refund of the employee's accumulated contributions, in lump sum.

3. If an actively employed firefighter in the new system or one in the old system electing coverage under the new system, who is eligible by age and service to retire, should die a non duty death, and if the firefighter had been married for less than two years or was unmarried at the time of his death, and if the firefighter has failed to designate a beneficiary to



receive any death benefits payable, a refund of the employee's accumulated contributions, in lump sum, shall be paid to the person or persons who meet the trustees' definition of legal representatives, as defined in Article I.5 hereof.

Where no beneficiary has been designated, the legal representative shall receive a refund of the employee's contributions plus interest earned thereon.

4. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, who is not eligible by age and service to retire when he suffers a non duty death, his designated beneficiary may elect payment to the statutory beneficiaries of the benefits set forth in §3378(A)(2) and §3378(B), or may elect to receive a refund of the employee's contributions.

5. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, who is not eligible by age and service to retire when he suffers a non duty death, and he fails to designate a beneficiary to receive any death benefits payable, a refund of the employee's accumulated contributions, in lump sum, shall be paid to the person or persons who meet the definition of legal representatives, as defined in Article I.5 hereof.

6. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, who is not eligible by age and service to retire when he suffers a non duty death, and the firefighter is survived by dependent minor children or physically or mentally handicapped dependent childrer., each child will receive a death benefit set forth in §3378(A)(2).

#### B. On Duty Deaths

1. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, whether or not he is eligible by age and service to retire when he suffers death in the line of duty, the surviving spouse shall elect one of the following death benefits:

1) The surviving spouse shall receive an annuity payable for the duration of her life and calculated as if the participant had survived till he had 20 years service at the same salary and elected to retire under §3385, Option 2 with no reduction for age at the date of retirement. The Option 2 calculation shall be based on his age and the age of his widow at the date of death. [§3385, last paragraph.] OR

2) The surviving spouse may alternatively receive a refund of the employee's accumulated contributions, in lump sum.

2. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, whether or not he is eligible by age and service to retire when he suffers death in the line of duty, and if the employee is unmarried at the time of death, his designated beneficiary may elect one of the following death benefits:

1) The designated beneficiary shall receive an annuity payable for the duration of her life and calculated as if the participant had survived till he had 20 years service at the same salary and elected to retire under §3385, Option 2 with no reduction for age at the date of retirement. The Option 2 calculation shall be based on his age and the age of his

designated beneficiary at the date of death. [§3385, last paragraph.] OR

2) The designated beneficiary may elect to receive a refund of the employee's accumulated contributions, in lump sum.

3. If an actively employed firefighter in the new system, or one in the old system electing coverage under the new system, whether or not he is eligible by age and service to retire when he suffers death in the line of duty, and is unmarried at the time of death but has failed to designate a beneficiary, a refund of the employee's accumulated contributions, in lump sum, shall be payable to the person or persons who meet the trustees' definition of legal representatives, as defined in Article I.5 hereof.

Where no beneficiary has been designated, the legal representative shall receive a refund of the employee's contributions plus interest earned thereon.

4. If a death benefit is payable to either the surviving spouse or widowed parent of a firefighter who dies after retirement from the effects of a line of duty injury or disease, the survivor's pension payable under L.R.S. 11:3378(A)(1) for line of duty deaths shall be 50 percent of the salary paid to the firefighter when he originally retired, plus, if the firefighter's original benefit also amounted to 50 percent of his salary, all cost of living increases that were awarded to the retiree following his retirement and until his date of death, or plus all cost of living increases that would have been awarded on the 50 percent annuity if that had been the amount payable to the firefighter as a retirement benefit.

#### V. General

1. A spouse or parent may receive only one pension (§3378.A(1)(2)).

2. Neither a retiree nor a surviving spouse shall receive a pension less than \$300 per month (§3383).

3. Once a firefighter has retired and elected an optional benefit under §3385, neither the designated joint annuitant nor the optional form of benefit may be changed. When the survivor designated as a joint annuitant dies, no further survivor benefit shall be payable.

4. No benefit or joint annuity payable under §3385 shall exceed the actuarial value of the participant's benefit.

5. Unless the benefit payable is a refund of the participant's own contributions together with any interest payable thereon, or is payable under §3378(B), no lump sum benefits shall be payable by this fund. (L.R.S. 11:155.)

A public hearing will be conducted by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity at 10 a.m. on June 15, 1995 at 329 South Dorgenois Street, New Orleans, LA 70119.

Any interested party may submit data, views or arguments orally or in writing concerning these rules or may make inquiries concerning the adoption of these rules to Richard Hampton, Jr., Secretary-Treasurer of the Board of Trustees, 329 South Dorgenois Street, New Orleans, LA 70119.

William M. Carrouché  
President



**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Death Benefit Payment**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The only estimated implementation cost which is anticipated will be the cost of printing and distributing copies of the proposed rules and regulations to persons making a request for a copy of such rules and regulations. Copying cost (if every participant in the Firefighters' Pension and Relief Fund requested one copy) is estimated at \$394.38.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Adoption and implementation of the rules and regulations for payment of death benefits should not have any effect on revenue collection of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Adoption and implementation of the amended rules and regulations for payment of death benefits should not have any effect on cost and/or economic benefits to any person or entity.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Adoption and implementation of the amended rules and regulations for payment of death benefits should not have any effect on competition and employment.

Marie Healey  
Fund Counsel  
9505#064

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Office of the Governor  
Office of Veterans Affairs  
Veterans Affairs Commission**

**Veterans' Homes Admission/Fee Requirements  
(LAC 4:VII.Chapter 9)**

The Louisiana Department of Veterans Affairs hereby amends LAC 4:VII.Chapter 9. This Chapter is being revised to establish uniform criteria for admission requirements and care and maintenance fees for all Louisiana State Veterans' Homes.

**Title 4**

**ADMINISTRATION**

**Part VII. Governor's Office**

**Chapter 9. Veterans Affairs**

**Subchapter D. Louisiana State Veterans' Homes**

**§937. Admission Requirements**

A. For admission to a Louisiana State Veterans' Home, a veteran must be a resident of the State of Louisiana. State residence is not mandatory if applicant is referred from an in-state United States Department of Veterans Affairs Medical Center, or by a Louisiana Department of Veterans Affairs Veterans Assistance Counselor. The veteran must be

recommended by the home administrator and approved for admission by the executive director of the Louisiana Department of Veterans Affairs.

B. The veteran must have served on active military duty 90 days or more during a wartime period, as defined by the United States Department of Veterans Affairs, or 90 days or more consecutive service that either began or ended during a wartime period, or if less than 90 days, discharged due to a disability incurred in the line of duty and must be in receipt of a discharge under honorable conditions for his/her latest period of active military service.

C. The veteran must undergo a medical examination prior to admission and, as a result, it must be confirmed that he/she does not have a communicable disease, does not require medical or hospital care for which the home is not equipped to provide, and does not have violent traits, which may prove dangerous to the physical well-being of the other patients or employees.

D. The veteran must consent to abide by all rules and regulations governing the home and to follow the course of treatment as prescribed by the veterans' home medical staff.

E. The veteran or party responsible for his/her financial matters must agree to pay the full patient care and maintenance fee. The Louisiana State Veterans' Home Administrator may waive any charge that exceeds the veteran's income.

F. Income, either the availability of or lack of, will not be a factor for admission.

G. The veteran applicant must not have criminal charges pending against him/her.

H. The veteran applicant must not be confined in a correctional facility or treatment facility for the criminally insane.

I. Veteran applicants under judicial/court commitments will not be accepted for admission.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:253.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

**§939. Care and Maintenance Fees**

A. Care and maintenance fees will be based on total family income. This included income from all sources (Social Security, United States Department of Veterans Affairs pension/compensation, private pension, interest from savings, and/or interest bearing accounts/investments.

B. In no case will the fee charged to the patient be more than the actual cost of care as determined by the executive director of the Louisiana Department of Veterans Affairs and approved by the Veterans Affairs Commission.

C. All income earned as a direct result of the sale of arts and crafts made at the home shall be excluded as countable income when computing care and maintenance charges. However, one-half of such income will be returned to the Recreation and Welfare Fund Account to be used in replenishing supplies.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

#### **§941. Domiciliary Care and Maintenance Fees**

A. If a patient's family income is \$300 or more each month, he/she will be allowed to retain the first \$100 per month for personal spending. All remaining income must be applied to the care and maintenance fees until maximum cost of care is reached.

B. If a patient's family income is less than \$300 each month, he/she will be allowed to retain the first \$60 per month for personal spending. All remaining income will be applied to care and maintenance fees until maximum cost of care is reached.

C. If a patient has a legal dependent(s), he/she will be allowed a deduction from total family income of up to \$300 per month for a spouse and up to \$150 per month for each dependent child before the care and maintenance fee is computed. This same policy will also apply when computing nursing care and maintenance fees.

D. Domiciliary care is defined for the purpose of this section, as all beds approved as domiciliary beds by the United States Department of Veterans Affairs.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:261, R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

#### **§943. Nursing Care and Maintenance Fees**

Patients will be allowed to retain the first \$60 per month for personal spending and appropriate deduction(s) for any legal dependent(s) as specified in §941.C above. All remaining income must be applied to the care and maintenance fee until the maximum care cost is reached.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:261, R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

#### **§945. Mandatory Election for Benefits**

Patients must apply for all monetary benefits for which they may be entitled to from both the state and federal government. Any increase as a result thereof must be applied to care and maintenance fees until maximum cost of care is reached.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:261, R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

#### **§947. Fee Payable in Advance after Admission**

Care and maintenance fees are payable one month in advance. These fees are due before the tenth of each month. A portion of a month will be prorated according to the number of days stay. Patients will not be charged care and maintenance fees for periods of hospital confinement in excess of 96 hours unless they desire that a bed be held until they return. For periods of leave from the home, care and maintenance fees are payable as arranged with the home administrator or his designee. Patients that are unable to pay charges in advance will be allowed to prorate the advance month fee over a 12-month period.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:261, R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

#### **§949. Fees Adjusted**

Care and maintenance fees will be adjusted when it has been established that there is a change in the veteran's total family income. The home reserves the right to obtain updated income information from the patient or his/her responsible party (signed authority at admission by patient, and/or responsible party, or any other source). The home also reserves the right to establish retroactive charges effective to the date a change of income occurs.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:261, R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

#### **§951. Additional Fees**

In addition to the regular care and maintenance fees collected, if less than the maximum monthly amount, and the patient has an accumulation of funds in excess of \$500 if single, and \$7,500 if married, the patient will be assessed an amount that would bring his care and maintenance fees up to the maximum allowable per month until their funds are reduced to the above stated balance.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

#### **§953. Home Administrator Authority when Incorrect Income Reported**

The home administrator, when provided incorrect total family income information, will avail himself of all state laws to recoup all monies that should be made available to the home for care and maintenance fees, retroactive to the time that these monies became available for the patient's use while he/she was residing at a Louisiana State Veterans' Home.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:261, R.S. 29:384.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

**§955. Unusual Financial Circumstances**

A. All patients at a Louisiana Veterans' Home who feel they have unusual financial circumstances/hardships can request relief and consideration of a reduction in care and maintenance fees. Under no circumstances will the waiver exceed 25 percent of the established care and maintenance fee, which is based on total family income. Patients may apply for this consideration through the home administrator. The home administrator will forward the request, with an appropriate recommendation, to the executive director of the Louisiana Department of Veterans Affairs for approval or disapproval. In the event the request is denied, an appeal may be submitted to the Veterans Affairs Commission for their consideration. The decision of the Veterans Affairs Commission shall be final.

B. All waivers that are in force will be re-evaluated annually on anniversary month. The home administrator will make a report of re-evaluation with recommendations on each case to the executive director of the Louisiana Department of Veterans Affairs for further consideration. If the waiver is discontinued, an appeal may be submitted to the Veterans Affairs Commission for their consideration. The decision of the Veterans Affairs Commission shall be final.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 29:251.2.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Office of Veterans Affairs, LR 9:411 (June 1983), repromulgated LR 9:549 (August 1983), amended LR 11:34 (January 1985), LR 13:86 (February 1987), LR 13:161 (March 1987), LR 13:570 (October 1987), LR 18:269 (March 1992), LR 21:

These proposed rules are to become effective on August 20, 1995, or upon publication in the *Louisiana Register*.

All interested persons are invited to submit written comments on the proposed rules. Such comments should be submitted no later than June 23, 1995, at 4:30 p.m., to Ernie P. Broussard, Executive Director, Louisiana Department of Veterans Affairs, Box 94095, Capitol Station, Baton Rouge, LA 70804-9095.

Ernie P. Broussard  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Admission/Fee Requirements**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no implementation costs for the proposed addition and amendments to admission requirements and care

and maintenance fees for Louisiana State Veterans' Homes.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The adoption of the proposed amendments will not effect revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Estimated costs to directly affected persons is minimal since care and maintenance fees will only be collected from veterans that have the ability to pay. Availability of income is not a criteria for admission. The proposed change in LAC 4:VII.941.A reduces from \$120 to \$100 per month the amount a domiciliary patient will be allowed to retain for personal spending.

Section 951 proposed amendment allows for an increase of accumulated funds from \$5,000 to \$7,500 for married patients.

Section 955.B proposed addition implements a waiver review procedure.

Currently, waivers that are in force are not re-evaluated even though the condition or circumstances which justified the waiver is no longer present. In addition, §955.B requires that each waiver in force be re-evaluated on the anniversary month. It is difficult at best to place a fiscal impact on this rule addition because there is no historical data to base a projected number of waivers that will be discontinued. However, since waivers are not to exceed 25 percent of the established care and maintenance fee, in no instance will the fiscal impact adversely affect a patient for more than the dollar amount they were originally paying prior to the granting of the waiver.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition and employment if proposed amendments are approved.

Ernie P. Broussard  
Executive Director  
9505#054

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of Public Health**

**Sanitary Code—Seafood (Chapter IX)**

The Department of Health and Hospitals, Office of Public Health intends to amend Chapter IX of the State Sanitary Code, Section 9:051 and 9:052. These proposed rule changes are necessary in order to provide an increased level of assurance that shell-stock oysters, clams and mussels are refrigerated (after harvest) in a timely manner, and that they are not eaten raw after an appropriate shelf life (14 days). Adoption of these rules is necessary for this program to be in compliance with the latest recommendations of the Interstate Shellfish Sanitation Conference.

Sections 9:501 and 9:502 shall be amended as followed:

## Chapter IX

### Seafood

\* \* \*

**9:051 TAGS** — In order that information may be available to inspectors and others with reference to the origin of shell-stock oysters, clams and mussels from all areas, all containers holding shell-stock shall be identified by a tag or label, form and substance of which shall be approved by the state health officer, and the secretary of the Department of Wildlife and Fisheries.

**9:051-1** The initial tagging of the shell-stock shall be performed by the harvester before the shell-stock are removed from the harvester's boat. In the event that shell-stock are harvested from more than one growing area on a given day, the shell-stock shall be sacked and tagged before leaving the growing area from which the shell-stock were harvested. The harvester's tags shall contain legible information arranged in the specific order as follows:

A. a place shall be provided where the dealer's name, address and certification number assigned by the Office of Public Health, Seafood Sanitation Program is added;

B. the harvester's identification number assigned by the Department of Wildlife and Fisheries;

C. the date of harvesting;

D. the most precise identification of the harvest site or aquaculture location as practicable;

E. type and quantity of shellfish; and

F. the following additional statements shall appear on each tag in bold capitalized type:

(1) THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.

(2) THIS PRODUCT SHOULD NOT BE CONSUMER RAW AFTER 14 DAYS FROM THE DATE OF HARVEST; BEYOND THIS 14-DAY PERIOD, THIS PRODUCT SHOULD BE THOROUGHLY COOKED.

(3) AS IS THE CASE WITH CONSUMING OTHER RAW ANIMAL PROTEIN PRODUCTS, THERE IS A RISK ASSOCIATED WITH CONSUMING RAW OYSTERS, CLAMS AND MUSSELS. IF YOU SUFFER FROM CHRONIC ILLNESS OF THE LIVER, STOMACH, OR BLOOD OR HAVE IMMUNE DISORDERS, DO NOT EAT THESE PRODUCTS RAW. RETAILERS PLEASE ADVISE CUSTOMERS.

**9:051-2 PENALTIES** — Shell-stock not tagged in accordance with the aforementioned requirements shall be deemed adulterated and misbranded and shall constitute a prohibited act pursuant to the Food, Drug and Cosmetic Law. (See LSA-R.S. 40:607, 608, 636). LSA-R.S. 40:639 provides for a fine of not more than \$1,000 or imprisonment for not more than one year, or both. Additionally, shellfish deemed adulterated and misbranded shall be seized and destroyed, or bedded on a Department of Wildlife and Fisheries managed seed reservation at the violator's expense.

**9:052 REFRIGERATION OF SHELL-STOCK OYSTERS, CLAMS AND MUSSELS** — Shell-stock shall be placed under mechanical refrigeration at a temperature not to exceed 45°F within two

hours after docking of the harvesting vessel, and shall be maintained at or below that temperature throughout all levels of commerce. Shell-stock shall be transported on land via mechanically refrigerated trucks at an internal air temperature not exceeding 45°F. During the time period April 1 through November 30, all shell-stock fishermen without effective on-board mechanical refrigeration capability shall be responsible for having their shell-stock delivered to dockside and under refrigeration within 14 hours from time of harvest and no later than 9 p.m. each day. The use of ice as a means of refrigerating shell-stock shall be prohibited.

If fishermen elect to harvest shell-stock for bedding purposes during the April 1 through November 30 time period, the 14-hour harvesting limitation may be waived under the following conditions:

A. that the sacking or containerizing of shellfish shall be prohibited during the time period when shell-stock are harvested for bedding purposes.

B. that the storage of empty sacks or other shellfish containers aboard an authorized harvesting vessel shall be prohibited during the time period when shellfish are harvested, transported and bedded.

**9:052-1 PENALTIES** — Shell-stock not refrigerated in accordance with the aforementioned requirements shall be deemed adulterated and shall constitute a prohibited act pursuant to the Food, Drug and Cosmetic Law. (See LSA-R.S. 40:607, 608, 638). LSA-R.S. 40:639 provides for a fine for the first offense of not more than \$1,000 or imprisonment for not more than one year, or both. Additionally, shellfish deemed adulterated shall be seized and destroyed, or bedded on a Department of Wildlife and Fisheries managed seed reservation at the violators expense.

\* \* \*

The effective date of these rules is August 1, 1995. Interested persons may submit questions or written comments to the following address: Charles C. Conrad, Administrator, Seafood Sanitation Unit, Box 60630, New Orleans, LA 70160. He is responding to inquiries regarding these proposed rule changes. All questions or comments must be viewed by July 1, 1995.

Rose V. Forrest  
Secretary

#### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Sanitary Code—Seafood

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no implementation cost or savings to state or local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections by state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There should be no measurable costs and/or economic benefits to directly affected persons or nongovernmental units.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There should be no measurable effect on competition and employment.

Charles F. Castille  
Deputy Secretary  
9505#055

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Health and Hospitals  
Office of the Secretary**

**Maternal and Child Health Block Grant**

The Department of Health and Hospitals (DHH) intends to apply for Maternal and Child Health (MCH) Block Grant Federal Funding for FY 1995-96 in accordance with Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, and with federal regulations as set forth in the Federal Register Vol. 47, No. 129, Tuesday, July 6, 1982, pages 29472-29493. DHH will continue to administer programs funded under the MCH Block Grant in accordance with provisions set forth in Public Law 97-35 and the federal regulations. The Office of Public Health is the office responsible for program administration of the grant.

A public hearing on the Block Grant is scheduled for Wednesday, July 5, 1995, at 1 p.m., in the Department of Health and Hospitals, Third Floor Conference Room, 1201 Capitol Access Road, Baton Rouge, LA. At the public hearing all interested persons will have the opportunity to provide recommendations on the proposed Block Grant orally or in writing. Written comments will be accepted through July 20, 1995. Comments may be addressed to Eric Baumgartner, M.D., Assistant Secretary, Office of Public Health, 1201 Capitol Access Road, Baton Rouge, LA. The application is available for review at any regional OPH facility.

Rose Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Maternal and Child Health  
Block Grant**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This block was implemented in FY '82. Neither an increase nor a decrease in implementation costs is expected, as DHH will continue to administer these programs in accordance with existing federal and state laws and regulations. No workload change is anticipated, as the same amounts and kinds of services are expected to be delivered.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

No effect on revenue collections is anticipated. Naturally, if the federal allotment to Louisiana for this block decreases, the state will be required to subsequently decrease the allotment to all programs covered under the block, but this is a factor beyond our control. The amount of the allocation for Louisiana for FY 95-96 is expected to be \$14,795,682 which is the same amount as FY 94-95.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

No direct effect is anticipated on patients, groups, units of local government or state agencies other than DHH.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

No effect is anticipated on competition and employment, as the same kinds and amounts of services are to be offered. Should the amount of federal funds eventually appropriated be at such a decreased level as to warrant reductions in staff, unemployment will result.

Eric T. Baumgartner, M.D., MPH  
Assistant Secretary  
9505#048

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**EPSDT Personal Care Attendant Services**

The Department of Health and Hospitals, Office of the Secretary, is proposing to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Medicaid Program currently reimburses for various services under the Early, Periodic Screening, Diagnosis and Treatment Program (EPSDT) for Medicaid eligible under 21 years of age. Under the provisions of Section 1905(r)(5) of the Social Security Act, Medicaid is mandated to provide to EPSDT eligibles, all medically necessary services described in 1905(a), including "other diagnostic, treatment and other measures... needed to ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the state Medicaid plan." The Medicaid agency may put reasonable limits and qualifying criteria for such services, but must provide to EPSDT eligibles, all medically necessary services that could otherwise be included in a Medicaid State Plan. Louisiana Medicaid has been advised by the Health Care Financing Administration that it must include Personal Care Services, also known as personal care attendant (PCA) services, in its coverage of medically necessary services to EPSDT eligibles for all EPSDT eligibles identified as requiring such services and referred by a physician for such services as he determines are medically necessary. While PCA services are available under the Home and Community-Based Services waiver for Mentally Retarded/Developmentally Disabled (MR/DD) Medicaid eligibles, there were a limited number of slots and an extensive waiting list for services currently exists. This rule implements policy to provide EPSDT Personal Care Attendant services of a lesser scope to EPSDT eligibles meeting certain criteria. This action is necessary to comply with federal law and regulations and prevent the potential loss of federal Medicaid funds for noncompliance. The impact in SFY 94-95 is projected to be negligible given the need for prior authorization of the services and lags in submission of claims. It is anticipated that few claims will be submitted prior to the beginning of the SFY 95-96.

**Proposed Rule**

The Department of Health and Hospitals shall amend the coverage for EPSDT services and provide a methodology for reimbursement of personal care attendant services for EPSDT eligibles as noted below.

**I. Amount, Duration and Scope of EPSDT Personal Care Attendant Services**

A. EPSDT Personal Care Attendant services are defined as medically necessary tasks pertaining to an EPSDT eligible's functional abilities which prevents institutionalization and enables the client to be treated on an outpatient basis rather than an inpatient basis. EPSDT Personal Care Attendant services include the following:

1. basic personal care, toileting and grooming activities, including bathing, care of the hair and assistance with clothing;
2. assistance with bladder and/or bowel requirements or problems, including helping the client to and from the bathroom or assisting the client with bedpan routines, but

excluding catheterization;

3. assistance with eating and food, nutrition, and diet activities, including preparation of meals for the recipient only;
4. performance of incidental household services essential to the client's health and comfort in her/his home. Examples of such activities are changing and washing bed linens and rearranging furniture to enable the recipient to move about more easily in his/her own home.
5. accompanying the client to and from his/her physician and/or medical facility for necessary medical services.
6. EPSDT Personal Care Attendant services are not to be provided to meet childcare needs nor as a substitute for the parent in the absence of the parent.
7. PCA services are not for the purpose of providing respite care to the primary caregiver.
8. EPSDT Personal Care Attendant services shall not be covered in an educational setting in which the Department of Education has responsibility for providing these services in the school.
9. The following services are not appropriate for personal care and are *not reimbursable as EPSDT Personal Care Attendant services*:
  - a. insertion and sterile irrigation of catheters (although changing of a catheter bag is allowable);
  - b. irrigation of any body cavities which require sterile procedures;
  - c. application of dressing, involving prescription medication and aseptic techniques, including care of mild, moderate or severe skin problems;
  - d. administration of injections of fluid into veins, muscles or skin;
  - e. administration of medicine (as opposed to assisting with self-administered medication for EPSDT eligibles over 18 years of age);
  - f. cleaning of floor and furniture in an area not occupied by the recipient, for example cleaning entire living area if the recipient occupies only one room;
  - g. laundry, other than that incidental to the care of the recipient, for example laundering of clothing and bedding for the entire household, as opposed to simple laundering of the recipient's clothing or bedding;
  - h. shopping for groceries or household items other than items required specifically for the health and maintenance of the recipient, and not for items used by the rest of the household;
  - i. skilled nursing services, as defined in the State Nurse Practices Act, including medical observation, recording of vital signs, teaching of diet and/or administration of medications/injections, or other delegated nursing tasks;
  - j. teaching a family member or friend how to care for a patient who requires frequent changes of clothing or linens due to total or partial incontinence for which no bowel or bladder training program for the patient is possible;
  - k. specialized nursing procedures such as insertion of nasogastric feeding tube, in-dwelling catheter, tracheostomy

care, colostomy care, ileostomy care, venipuncture and/or injections;

l. rehabilitative services such as those administered by a physical therapist;

m. teaching a family member or friend techniques for providing specific care;

n. palliative skin care with medicated creams and ointments and/or requires routine changes of surgical dressings and/or dressing changes due to chronic conditions;

o. teaching of signs and symptoms of disease process, diet and medications of any new or exacerbated disease process;

p. specialized aid procedures such as:

i. rehabilitation of the patient (exercise or performance of simple procedures as an extension of physical therapy services);

ii. measuring/recording patient vital signs (temperature, pulse, respirations and/or blood pressure, etc.) or intake/output of fluids;

iii. specimen collection;

iv. special procedures such as nonsterile dressings, special skin care (nonmedicated); decubitus ulcers; cast care; assisting with ostomy care; assisting with catheter care; testing urine for sugar and acetone; breathing exercises; weight measurement; enemas;

q. home IV therapy;

r. custodial care or provision of only instrumental activities of daily living tasks or provision of only one activity of daily living task;

s. occupational therapy; speech pathology services; audiology services, respiratory therapy;

t. personal comfort items; durable medical equipment; oxygen; orthotic appliances or prosthetic devices;

u. drugs provided through the Louisiana Medicaid pharmacy program;

v. laboratory services; and

w. social worker visits.

B. Conditions for provision of EPSDT Personal Care Attendant (PCA) services are as follows:

1. The client must be a categorically eligible Medicaid recipient birth through 20 years of age (EPSDT eligible) and have been prescribed EPSDT PCA services by a physician.

2. An EPSDT eligible must meet criteria for institutionalization equivalent to at least an Intermediate Care Facility I (ICF-I) level of care; and be impaired in at least two activities of daily living tasks, as determined by BHSF.

3. When determining whether a recipient qualifies for EPSDT PCA services, consideration must be given not only to the type of services needed, but also the availability of family members and/or friends who can aid in providing such care. EPSDT PCA services are not to function as a substitute for childcare arrangements.

4. EPSDT Personal Care Attendant services must be prescribed by the recipient's attending physician initially and every 180 days thereafter (or rolling six months), and when

changes in the plan of care occur. The physician should only sign a fully completed plan of care which shall be acceptable for submission to BHSF only after the physician signs and dates the form. The physician's signature must be an original signature and not a rubber stamp.

5. EPSDT Personal Care Attendant services must be prior authorized by the Bureau of Health Services Financing or its designee. A face-to-face medical assessment shall be completed by the physician. The recipient's choice of personal care services provider may assist the physician in developing a plan of care which shall be submitted by the physician for review/approval by BHSF or its designee. The plan of care must specify the personal care service(s) to be provided (i.e., activities of daily living for which assistance is needed) and the minimum and maximum frequency and the minimum and maximum duration of each of these services. Dates of care not included in the plan of care or provided prior to approval of the plan of care by BHSF are not reimbursable. The recipient's attending physician shall review and/or modify the plan of care and sign off on it prior to the plan of care being submitted to BHSF. A copy of the physician's prescription or referral for EPSDT PCA services must also be retained in the personal care services provider's files. A new plan of care must be submitted at least every 180 days (rolling six months) with approval by the recipient's attending physician. The plan of care must reassess the patient's need for EPSDT PCA services, including any updates to information which has changed since the previous assessment was conducted (with explanation of when and why the change(s) occurred). Revisions of the plan of care may be necessary because of changes that occur in the patient's medical condition which warrant an additional type of service, an increase in frequency of service or an increase in duration of service. Documentation for a revised plan of care is the same as for a new plan of care. Both a new "start date" and "reassessment date" must be established at the time of reassessment. The provider may not initiate services or changes in services under the plan of care prior to approval by BHSF.

6. EPSDT Personal Care Attendant services must be provided in the recipient's home or in another location if medically necessary to be outside of the recipient's home. The recipient's home is defined as the recipient's own dwelling, an apartment, a custodial relative's home, a boarding home, a foster home, a substitute family home or a supervised living facility. Institutions such as a hospital, institution for mental diseases, nursing facility, intermediate care facility for the mentally retarded or residential treatment center are not considered a recipient's home.

7. Personal care attendant services must be provided by a licensed personal care attendant (PCA) agency which is duly enrolled as a Medicaid provider. Staff assigned as a recipient's personal care attendant shall not be a member of the recipient's immediate family. (Immediate family includes father, mother, sister, brother, spouse, grandparent, mother-



or father-in-law or any individual acting as parent or guardian of the recipient). Personal care attendant (PCA) services may be provided by a person of a degree of relationship to the recipient other than immediate family, if the relative is not living in the recipient's home, or, if she/he is living in the recipient's home solely because her/his presence in the home is necessitated by the amount of care required by the recipient.

8. EPSDT Personal Care Attendant services are limited to a maximum of four hours per day per recipient as prescribed by the recipient's attending physician and prior authorized by the Bureau of Health Services Financing (BHSF) or its designee. Extensions of this limit may be requested and granted if determined medically necessary by the Bureau of Health Services Financing or its designee.

## II. Standards for Payment

A. EPSDT Personal Care Attendant services may be provided only to EPSDT eligibles and only by a staff member of a licensed personal care services agency enrolled as a Medicaid provider. A copy of the current PCA license must accompany the Medicaid application for enrollment as a PCA provider and additional copies of current licenses shall be submitted to Provider Enrollment thereafter as they are issued, for inclusion in the enrollment record. The provider's enrollment record must include at all times a current PCA license. Enrollment is limited to providers in Louisiana and out-of-state providers only in trade areas of states bordering Louisiana (Arkansas, Mississippi, and Texas).

B. The unit of service billed by EPSDT PCA providers shall be one-half hour, exclusive of travel time to arrive at the recipient's home. The majority (25 minutes) of the unit of time shall have been spent providing services in order to bill a unit.

C. All EPSDT PCA services must be prescribed by a physician at least every 180 days (rolling six months) as indicated by his/her approval on the plan of care for EPSDT PCA services.

D. EPSDT PCA services shall be prior authorized by BHSF in accordance with a plan of care submitted by the provider and approved by the physician, for no more than a six-month period. Services must be reauthorized every six months and a new plan of care must be submitted with each subsequent request for approval. Amendments or changes in the plan of care should be submitted as they occur and shall be treated as a new plan of care which begins a new six-month service period.

E. The PCA agency is responsible for ensuring that all personal care attendants meet all training requirements applicable under state law and regulations. The personal care attendant must successfully complete the applicable examination for certification as a PCA. Documentation of the PCA's completion of requirements shall be maintained by the personal care services provider.

F. The recipient shall be allowed the freedom of choice to select an EPSDT PCA provider.

G. Documentation for EPSDT PCA services provided shall include at a minimum, the following: documentation of approval of services by BHSF or its designee; daily notes by PCA denoting date of service, services provided (checklist is adequate); total number of hours worked; time period worked; condition of client; service provision difficulties; justification for not providing scheduled services and any other pertinent information. There must be a clear audit trail between the prescribing physician, the personal care provider, the personal care attendant, the recipient, and the services provided and reimbursed by Medicaid.

H. EPSDT PCA providers shall submit a noninstitutional cost report based on the State fiscal year; the cost report shall be subject to desk review and audit by BHSF or its designee.

I. Agencies providing EPSDT PCA services shall conform to all applicable Medicaid regulations as well as all applicable laws and regulations by federal, state, and local governmental entities regarding wages, working conditions, benefits, Social Security deductions, OSHA requirements, liability insurance, Workman's Compensation, occupational licenses, etc.

J. EPSDT Personal Care Attendant services provided to meet childcare needs or as a substitute for the parent in the absence of the parent shall not be reimbursed.

K. EPSDT Personal Care Attendant services provided for the purpose of providing respite to the primary caregiver shall not be reimbursed.

L. EPSDT Personal Care Attendant services provided in an educational setting for which the Department of Education has responsibility for providing such services shall not be reimbursed.

## III. Reimbursement Methodology for EPSDT PCA Services

EPSDT PCA services shall be paid the lesser of billed charges or the maximum unit rate set by BHSF based on the federal minimum hourly wage plus fringe benefits (insurance, workmen's compensation, unemployment, etc.) not to exceed 22 percent; plus agency administrative and operating costs, including travel and training expenses of PCAs, not to exceed 24 percent of PCA's salary with fringe benefits; plus a profit factor not to exceed 4 percent of the above calculated rate.

Interested persons may submit written comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule. A public hearing has been set for Tuesday, June 27, 1995, in the auditorium of the Department of Transportation and Development at 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 at said hearing. Written comments will be received until 4:30 p.m. on the day following the public hearing.

Rose V. Forrest  
Secretary



FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: EPSDT Personal Care Attendant Services

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
It is anticipated that implementation of this proposed rule will increase state expenditures in the Medicaid Program by \$4,083,711 for SFY 1995-96 and by \$4,289,896 for SFY 1996-97. It is anticipated that the impact for the current state fiscal year will be negligible due to prior authorization requirement and lag in the submission of claims.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Implementation of this rule will increase federal revenue collections by \$10,542,760 for SFY 1995-96 and by \$11,069,898 for SFY 1996-97. No increases are expected for SFY 1994-1995.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The providers of personal care attendant services will experience an increase of \$14,626,471 for SFY 1996 and \$15,357,795 for SFY 1997.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT.(Summary)  
There is no known effect on competition and employment.

Thomas D. Collins  
Director  
9505#063

David W. Hood  
Senior Fiscal Analyst

NOTICE OF INTENT

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

Facility Need Review (LAC 48:I.12501-12505)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule to provide for Facility Need Review as authorized by R.S. 40:2116 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act.

The department proposes to repeal, in their entirety, its existing regulations providing for facility need review (LAC 48:I.12501 through 12505) which were initially adopted on January 20, 1991 and all subsequent amendments thereto as published in the *Louisiana Register*, and to adopt the following regulations to provide for facility need review. The department is revising §12502, Determination of Bed Need, in order to allow for the addition of beds to qualified nursing homes when these homes are being rebuilt, and also in order to lessen the rate of bed expansion based on nursing facility high occupancy. Revisions are being proposed to the existing rule to establish uniformity across program areas, and to properly codify the Chapter for inclusion in the Louisiana Administrative Code.

Title 48  
PUBLIC HEALTH - GENERAL  
Part I. General Administration  
Subpart 5. Health Planning

Chapter 125. Facility Need Review

§12501. Introduction

A. General Information

1. The Department of Health and Hospitals will conduct a Facility Need Review to determine if there is a need for beds/facilities of the following types to enroll in the Title XIX Program:

a. nursing facilities (includes skilled, IC-I and IC-II beds);

b. intermediate care facilities for the mentally retarded.

2. CFR 42 Part 442.12(d) allows the Medicaid agency to refuse to execute a provider agreement if adequate documentation showing good cause for such refusal has been compiled (i.e., when sufficient beds are available to serve the Title XIX population). The Facility Need Review Program will review applications for additional beds/facilities to determine whether good cause exists to deny participation in the Title XIX Program to prospective providers of Nursing Facility Services (Skilled, IC-I and IC-II), and ICF-MR services.

3. Applications are submitted to: Department of Health and Hospitals, Bureau of Health Services Financing, Facility Need Review Program, P.O. Box 91030, Baton Rouge, LA 70821-9030. Telephone: (504) 342-3881.

B. Definitions. When used in this rule the following terms and phrases shall have the following meanings unless the context requires otherwise:

*Applicant*—the person who is developing the proposal for purposes of enrolling the facility and/or beds in Medicaid. See definition of *Person*.

*Applicant Representative*—the person specified by the applicant on the application form to whom written notifications are sent relative to the status of the application during the review process.

*Approval*—a determination by the department that a proposal meets the criteria of the Facility Need Review Program for purposes of participating in Medicaid.

*Approved*—beds and/or facilities which are grandfathered in accordance with the grandfather provisions of this program and/or beds approved in accordance with the Facility Need Review Program.

*Community Home*—a type of community residential facility which has a capacity of eight or fewer beds.

*Department*—the Department of Health and Hospitals in the state of Louisiana.

*Department of Health and Hospitals (DHH)*—the agency responsible for administering the Medicaid Program in Louisiana.

*Disapproval*—a determination by the department that a proposal does not meet the criteria of the Facility Need Review Program and that the proposed facility/beds may not participate in Medicaid.

**Enrollment in Medicaid**—execution of a provider agreement with respect to reimbursement for services provided to Title XIX eligibles.

**Facility Need Review**—a review conducted for Nursing Facility (NF) beds (including skilled beds, IC-I and IC-II beds), and ICF-MR beds, to determine whether there is a need for additional beds to enroll and participate in the Medicaid Program.

**Group Home**—a type of community residential facility which has a capacity of nine to 15 beds.

**HCFA**—Health Care Financing Administration.

**Health Standards Section**—the Section in the Bureau of Health Services Financing, Office of the Secretary, which licenses health care facilities, certifies those applying for participation in the Medicaid (Title XIX) and Medicare (Title XVIII) Programs, conducts surveys and inspections, and enrolls Title XIX providers.

**Intermediate Care - Level I (IC-I)**—a level of care within a Nursing Facility (NF) which provides basic nursing services under the direction of a physician to persons who require a lesser degree of care than skilled services, but who need care and services beyond the level of room and board. Services are provided under the supervision of a registered nurse seven days a week during the day tour of duty with licensed nurses 24 hours a day.

**Intermediate Care - Level II (IC-II)**—a level of care within a Nursing Facility (NF) which provides supervised personal care and health related services, under the direction of a physician, to persons who need nursing supervision in addition to help with personal care needs. Services are provided under the supervision of a registered nurse seven days a week during the day tour of duty with licensed nurses 24 hours a day.

**Intermediate Care Facility for the Mentally Retarded (ICF-MR)**—a facility which provides mentally retarded residents with professionally developed individual plans of care, supervision, and therapy, to attain or maintain optimal functioning.

**Medicaid Program**—the program administered in accordance with Title XIX of the Social Security Act.

**Medicaid State Plan**—the plan under which the Department of Health and Hospitals administers the Medicaid Program.

**Notification**—is deemed to be given on the date on which a decision is mailed by the Facility Need Review Program or a hearing officer.

**Nursing Facility**—an institution which:

- a. is primarily engaged in providing to residents:
  - i. skilled nursing care and related services for residents who require medical or nursing care;
  - ii. rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or
  - iii. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities; said institutional facilities are those

facilities which are not primarily for the care of mental diseases;

b. has in effect a transfer agreement with one or more hospitals.

**Person**—an individual or other legal entity.

**Program**—the Facility Need Review Program.

**Review Period**—the period of time in which the review is conducted.

**Secretary**—the secretary of the Department of Health and Hospitals.

**Skilled Nursing Care**—a level of care within a Nursing Facility (NF) which provides intensive, frequent, and comprehensive nursing care and/or rehabilitation services ordered by and under the direction of a physician. Services are provided under the supervision of a registered nurse seven days a week during the day tour of duty with licensed nurses 24 hours a day. Skilled beds are located in nursing facilities and in "distinct parts" of acute care hospitals. Facility Need Review policies governing skilled beds in nursing facilities apply to Title XIX Skilled beds in hospitals; in order to be enrolled in Title XIX, skilled beds in hospitals must be approved through Facility Need Review. Skilled care is also referred to as "extended care".

#### C. Department Designation and Duties

1. The department shall be responsible for reviewing proposals for facilities and beds by health care providers seeking to participate in Medicaid; the secretary or his designee shall issue a decision of approval or disapproval.

2. The duties of the department under this program are including, but are not limited to, the following:

a. to determine the applicability of these provisions to all requests for approval to enroll facilities or beds in the Medicaid Program;

b. to review, determine and issue approvals or disapprovals for proposals determined to be subject to these provisions;

c. to adopt and promulgate such rules and regulations as may be necessary to implement the provisions of this program pursuant to the Administrative Procedure Act; and

d. to define the appropriate methodology for the collection of data necessary for the administration of the program.

D. Scope of Coverage. The Facility Need Review Program reviews proposals for increases in the number of beds eligible to participate in Medicaid. The following types of facilities/beds are reviewed:

1. nursing facilities (includes skilled, IC-I and IC-II beds)

2. intermediate care facilities for the mentally retarded

E. Grandfather Provision. An approval shall be deemed to have been granted under this program without review for nursing facilities (NF'S), and ICF-MR facilities and/or beds described below:

1. all valid Section 1122 approved health care facilities/beds;

2. all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this program.

3. all valid approvals for health care facilities issued under the Facility Need Review Program.

4. all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.

F. Revocation of Approvals/Availability of Beds for Title XIX Recipients

1. Nursing facility beds which are added to existing, licensed facilities must be enrolled in the Title XIX Program within one year of the date of approval by the Facility Need Review Program. New nursing facilities which are approved to be constructed must be enrolled in the Title XIX Program within 16 months of the date of the approval. An extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant (e.g., acts of God). Inappropriate zoning is not a basis for extension.

2. Group and community home beds for the mentally retarded must be enrolled in the Title XIX Program within nine months of the date of approval by the Facility Need Review Program. A one-time 90-day extension may be granted, at the discretion of the department, when delays are caused by circumstances beyond the control of the applicant (e.g., acts of God). Inappropriate zoning is not a basis for an extension.

3. If the beds are not enrolled in the Title XIX program within the time limits specified in F.1 and F.2 of this Section, the approval will automatically expire.

4. When the Office for Citizens with Developmental Disabilities advises that a group or community home bed for the mentally retarded/developmentally disabled which was approved for Title XIX reimbursement to meet a specific disability need identified in a Request for Proposals (RFP) issued by the department, is not being used to meet the need identified in the RFP, based on the facility serving a Medicaid recipient in the bed without prior approval from the Office for Citizens with Developmental Disabilities, approval of the bed shall be revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21: §12503. **Determination of Bed Need**

A. Community and Group Home Beds for the Mentally Retarded

1. The service area for a proposed or existing facility is designated as the department's Administrative Region in which the facility or proposed facility is or will be located. The department's Administrative Regions, and the parishes which comprise these regions, are as follows:

a. Region I: Jefferson, Orleans, Plaquemines, and St. Bernard;

b. Region II: Ascension, East Baton Rouge, East Feliciana, Iberville, Pointe Coupee, West Baton Rouge, and West Feliciana;

c. Region III: Assumption, Lafourche, St. Charles, St. James, St. John, St. Mary, and Terrebonne;

d. Region IV: Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin, and Vermilion;

e. Region V: Allen, Beauregard, Calcasieu, Cameron, and Jefferson Davis;

f. Region VI: Avoyelles, Catahoula, Concordia, Grant, LaSalle, Rapides, Vernon, and Winn;

g. Region VII: Bienville, Bossier, Caddo, Claiborne, DeSoto, Natchitoches, Red River, Sabine and Webster;

h. Region VIII: Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union, and West Carroll; and

i. Region IX: Livingston, St. Helena, St. Tammany, Tangipahoa, and Washington;

2. The beds and population of the service area where the facility is located, or is proposed to be located, will be considered in determining need for the facility/beds. Beds which are counted in determining need for community and group homes are approved licensed beds, and approved but not licensed beds, as of the due date for a decision on an application.

3. Data sources to be used include information compiled by the Facility Need Review Program, and the middle population projections recognized by the State Planning Office as official projections. Population projections to be used are those for the year in which the beds are to be enrolled in Medicaid.

4. In accordance with the department's policy of least restrictive environment, there is no currently identified need for additional facilities with 16 or more beds. Therefore, applications for facilities of 16 or more beds shall not be accepted for review, and applications to increase existing facilities to 16 or more beds shall not be accepted for review.

5. At the present time, the recommended bed-to-population ratio for community and group homes has been achieved. However, special needs and circumstances may arise which the department may consider as indicators of need for additional beds, such as occupancy rates, availability and accessibility of clients in need of placements, patient origin studies, and requests for special types of beds or services.

a. For service areas in which average annual occupancy for the four most recent quarters (as reported in the MR-2) is in excess of 93 percent, the department may review the census data, utilization trends, and other factors described in Subsection A.5 of this Section, to determine if additional beds are needed.

b. If the department determines that there is a need for beds in a parish with average annual occupancy in excess of 93 percent, a Request for Proposals (RFP) will be issued. The RFP will indicate the region in need of beds, the number of beds needed, the date by which the beds are needed to be available to the target population (enrolled in Medicaid), and the factors which the department considers relevant in determining the need for the additional beds. The RFP will specify the MR-2 on which the determination of need is based.

c. The RFP will be issued through the press (AP, UPI, nearest major metropolitan newspaper), and will specify the dates during which the department will accept applications.

d. No applications will be accepted under these provisions unless the department declares a need and issues a

Request for Proposals. Applications will be accepted for expansion of existing facilities and/or for the development of new facilities.

e. Applications will be accepted for a period to be specified in the RFP. Once submitted, an application cannot be changed; additional information will not be accepted.

f. The department will review the proposals and independently evaluate and assign points to each of the following 10 items on the application for the quality and adequacy of the response to meet the need of the project:

- i. work plan for Medicaid certification;
- ii. availability of the site for the proposal;
- iii. relationship or cooperative agreements with other health care providers;
- iv. accessibility to other health care providers;
- v. availability of funds; financial viability;
- vi. experience and availability of key personnel;
- vii. range of services, organization of services and program design;
- viii. methods to achieve community integration;
- ix. methods to enhance and assure quality of life; and
- x. plan to ensure client rights, maximize client choice and family involvement.

g. A score of 0-20 will be given to the applicant's response to each item using the following guideline:

- |      |                             |
|------|-----------------------------|
| 0 =  | inadequate response         |
| 5 =  | marginal response           |
| 10 = | satisfactory response       |
| 15 = | above average response; and |
| 20 = | outstanding response        |

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

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

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

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

l. Proposals approved under these provisions are bound to the description in the application with regard to type of beds and/or services proposed as well as to the location as defined

in the Request for Proposals made by the department. Approval for Medicaid shall be revoked if these aspects of the proposal are altered. Beds to meet a specific disability need approved through this exception must be used to meet the need identified.

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

6. Exception for beds approved from downsizing large residential ICF-MR facilities (16 or more beds):

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

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

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

i. when the department intends to downsize the enrolled bed capacity of a state-owned facility with 16 or more beds in order to develop one or more group or community home beds not to be owned by the state, a Request for Proposals (RFP) will be issued. The RFP will indicate the parish or region where the beds are to be developed, the number of beds to be developed, and the date by which the beds are to be made available to the target population (enrolled in Medicaid);

ii. the RFP will be issued and beds made available using methods described in Subsection A.5.c through m of this Section;

d. for private facility beds downsized to privately owned group or community homes, these facilities should contact the regional Office for Citizens with Developmental Disabilities, in the region where the proposed community or group home beds will be located. These proposals do not require Facility Need Review approval.

#### B. Nursing Facilities/Beds

1. Service Area. The service area for proposed or existing nursing facilities/beds is the parish in which the site is located. Exceptions are the parishes of Ascension, Iberville, Plaquemines and St. John, each of which is composed of two separate service areas as divided by the Mississippi River.

2. Nursing facility beds located in "distinct parts" of acute care general hospitals must be approved through Facility Need Review in order to be enrolled in Medicaid.

3. In determining occupancy rates of nursing facilities/beds:

a. beds for which occupancy shall be based shall include nursing facility beds (skilled, IC-I and IC- II) which are enrolled in Title XIX;

b. each licensed bed shall be considered as available for utilization for purposes of calculating occupancy;

c. a bed shall be considered in use, regardless of physical occupancy, based on payment for nursing services available or provided to any individual or payer through formal or informal agreement.

4. The beds and population of the service area where the facility is located, or is proposed to be located, will be considered in determining need for the facility/beds. Beds which are counted in determining need for nursing facilities/beds are approved licensed beds, and approved but not licensed beds, as of the due date for decision on an application.

5. Data sources to be used include information compiled by the Facility Need Review Program, and the middle population projections recognized by the State Planning Office as official projections. Population projections to be used are those for the year in which the beds are to be enrolled in Medicaid.

6. In order for additional beds/facilities to be added in a service area, the bed-to-population ratio for nursing facility beds shall not exceed 65 Medicaid approved beds per 1,000 elderly population in a service area, and average annual occupancy for the four most recent quarters (as reported in the LTC-2) shall exceed 95 percent in the service area. Exceptions for areas with high occupancy are described below:

a. a Medicaid enrolled nursing facility which maintains 98 percent average annual occupancy of its enrolled beds for the four most recent quarters (as reported in the LTC-2) may apply for approval for additional beds to be enrolled in the Medicaid Program:

i. in order for an application to be considered, all approved beds in the facility must be enrolled in Title XIX;

ii. in order for a facility to reapply for additional beds, all approved beds must be enrolled in Title XIX for the four most recent quarters, as reported in the LTC-2;

iii. the number of beds for which application may be made shall not exceed 10 beds;

iv. in determining occupancy rates for purposes of this exception, only an adjustment of one additional day after the date of death, for the removal of personal belongings, shall be allowed, if used for that purpose. This adjustment shall not be allowed if nursing services available or provided to another individual are paid for through formal or informal agreement in the same bed for that time period;

v. in determining occupancy rates, more than one nursing facility bed enrolled in Title XIX shall not be considered occupied by the same resident, regardless of payment for nursing services available or provided;

b. when average annual occupancy for the four most recent quarters (as reported in the LTC-2) exceeds 95 percent in a parish, the department will determine whether additional beds are needed, and if indicated, may issue a Request for Proposals to develop the needed beds:

i. upon issuance of the utilization report the department will identify the parishes with average annual occupancy in excess of 95 percent. The LTC-2 is issued by

the department in the fourth month following the end of each calendar quarter;

ii. For each parish in which average annual occupancy is in excess of 95 percent, the department, in order to determine if additional beds are needed, may review the census data, utilization trends, and other factors such as special needs in an area, information received from other health care providers and other knowledgeable sources in the area, waiting lists in existing facilities, requests from the community, patient origin studies, appropriateness of placements in an area, remoteness of an area, occupancy rates in adjoining and/or adjacent parishes, availability of alternatives, reasonableness of distance to facilities, distribution of beds within a service area or geographical area, and such other factors as the department may deem relevant. The number of beds which can be added shall not exceed 15 percent of the existing approved beds in the parish, or 120 beds, whichever is less. The department will strive to assure that occupancy in existing facilities in the area will not decline below 85 percent as a result of the additional beds;

iii. if the department determines that there is in fact a need for beds in a parish with average annual occupancy in excess of 95 percent, a Request for Proposals (RFP) will be issued. The RFP will indicate the parish and/or area in need of beds, the number of beds needed, the date by which the beds are needed to be available to the target population (enrolled in Medicaid), and the factors which the department considers relevant in determining need for the additional beds. The RFP will specify the LTC-2 on which the determination of need is based;

iv. the RFP will be issued through the press (AP, UPI, nearest metropolitan area newspaper), and will specify the dates during which the department will accept applications;

v. no applications will be accepted under these provisions unless the department declares a need and issues a Request for Proposals. Applications will be accepted for expansions of existing facilities and/or for the development of new facilities;

vi. applications will be accepted for a 30-day period, to be specified in the RFP. Once submitted, an application cannot be changed; additional information will not be accepted;

vii. the department will review the proposals and independently evaluate and assign points (out of a possible 100) to the applications, as follows:

- |              |  |
|--------------|--|
| 0-20 points: | Availability of beds to the Title XIX population. NOTE: work plan for Medicaid certification, and availability of site for the proposal;   |
| 0-20 points: | Appropriateness of location, or proposed location. NOTE: accessibility to target population, relationship or cooperative agreements with other health care providers, and distance to other health care providers; |
| 0-20 points: | Availability of funds; financial viability;  |
| 0-20 points: | Responsiveness to groups with special needs (e.g. AIDS patients, ventilator assisted patients; technology dependent patients);   |
| 0-20 points: | Experience and availability of key personnel (e. g., director of nursing, administrator, medical director);  |

viii. a score of 0-20 will be given to the applicant's response to each item using the following guideline:

- 0 = inadequate response
- 5 = marginal response
- 10 = satisfactory response
- 15 = above average response; and
- 20 = outstanding response

ix. if there is a tie for highest score for a specific facility/beds for which the department has requested proposals, a comparative review of the top scoring proposals will be conducted. In the case of a tie, the department will make a decision to approve one of the top scoring applications based on comparative review of the proposals;

x. if no proposals are received which adequately respond to the need, the department may opt not to approve an application;

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

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

xiii. proposals submitted under these provisions are bound to the description in the application with regard to the type of beds and/or services proposed as well as to the site/location as defined in the request made by the department. Approval for Medicaid certification shall be revoked if these aspects of the proposal are altered.

7. Alternate Use of Licensed Approved Title XIX Beds. In a service area in which average annual occupancy is lower than 93 percent, a nursing home may elect to temporarily convert a number of Title XIX beds to an alternate use (e.g., adult day care). The beds may be converted for alternate use until such time as the average annual occupancy in the service area exceeds 93 percent (based on the LTC-2 report). The facility shall then either re-enroll the beds as nursing home beds within one year of receipt of notice from the department that the average annual occupancy in the service area exceeds 93 percent, or surrender the approval.

8. Additional Beds for Replacement Facility. A nursing facility that has had all approved beds enrolled for the four most recent quarters (as reported in the LTC-2), and is structurally older than 25 years, may apply for approval for additional beds to be enrolled in the Medicaid Program in a replacement facility. The number of beds for which application may be made shall not exceed 20 beds, except that a facility may be approved for sufficient beds to bring the total approved beds in the replacement facility to 80, and except

that a facility shall not be approved for beds that would exceed 130 total approved beds in the replacement facility. Sufficient documentation must be submitted to demonstrate to the department's satisfaction that the facility is structurally older than 25 years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21: §12505. Application Procedures

#### A. General

1. Application shall be made to the department on forms provided for that purpose and shall contain such information as the department may require. Applications shall be submitted on 8 ½" by 11" paper, and shall be accompanied by a non-refundable fee of \$10 per bed. An original and three copies of the application shall be submitted.

2. The applicant representative specified on the application will be the only person to whom the Facility Need Review Program sends written notification in matters relative to the status of the application during the review process. If the applicant representative (or his address) changes at any time during the review process, the applicant shall notify the Facility Need Review Program in writing.

3. Applicants may request application forms in writing or by telephone from the Facility Need Review Program. The Facility Need Review Program will provide the applicant with application forms, inventories, utilization data, and other materials relevant to the type of application.

#### B. Review Process

1. The review period will be no more than 60 days, except as otherwise outlined in §12503.A.5.j and §12503.B.6.b.xi. The review period begins on the first day after the date of receipt of the application, or, in the case of issuance of an RFP, on the first day after the period specified in the RFP.

2. A longer review period will be permitted only when requested by the Facility Need Review Program. A maximum of 30 days will be allowed for an extension, except as otherwise outlined in §12503.A.5.j. An applicant may not request an extension of the review period, but may withdraw (in writing) an application at any time prior to the notification of the decision by the Facility Need Review Program. The application fee is non-refundable.

3. The Facility Need Review Program shall review the application within the specified time limits and provide written notification of the decision to the applicant representative. Notification of disapproval shall be sent by certified mail to the applicant representative, with reasons for disapproval specified. If notification is not sent by the sixtieth day, except as outlined in §12503.A.5.j and B.6.b.x, the application is automatically denied.

#### C. Appeal Procedures

1. Upon refusal of the department to grant approval, only the applicant shall have the right to an administrative appeal. A written request for such an appeal (by registered mail) must be received by the secretary of the Department of Health and Hospitals within 30 days after the notification of



disapproval is received by the applicant. A fee of \$500 shall accompany a request for an appeal.

2. Hearings shall be conducted by a hearing officer designated by the governor, provided that no person who has taken part in any prior consideration of, or action upon the application, may conduct such hearings. However, a hearing officer who presided over a hearing and remanded the matter to the department may hear a subsequent appeal of the same application if the department again disapproves the application.

3. The hearing shall commence within 30 days after receipt of the written request for the hearing. Requests by the department or the applicant for extensions of time within which to commence a hearing may be granted at the discretion of the hearing officer, provided that if the hearing is not concluded within 180 days from the date of receipt by the applicant of notification of disapproval, the decision of the department will be considered upheld.

4. The hearing officer shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues. The hearing shall be open to the public.

5. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs may be admitted and given probative effect. The rules of privilege recognized by law shall be given effect. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

6. All evidence, including records and documents in the possession of DHH of which it desires to avail itself, shall be offered and made part of the records, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within DHH's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material notices, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

7. The hearing officer shall have the power to sign and issue subpoenas, or to direct the department to do so, in order to require attendance and the testimony by witnesses and to require the productions of books, papers and other documentary evidence. The applicant is required to notify the hearing officer in writing at least 10 days in advance of the hearing of those witnesses whom he wishes to be subpoenaed. No subpoena shall be issued until the party (other than the department) who wishes to subpoena a witness first deposits with the hearing officer a sum of money

sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. DHH may request issuance of subpoenas without depositing said sum of money. The witness fee may be waived if the person is an employee of DHH. When any person summoned under this section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, DHH may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. It shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and upon such hearing, the judge may issue such order as he shall deem proper, not inconsistent with the law for the punishment of contempt, to enforce obedience to the requirements of the summons and to punish such person for this default or disobedience.

8. The department or any party to the proceedings may take the deposition of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in the review proceeding at issue. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the hearing officer in accordance with the rules of evidence provided in Subsection C of this Section.

9. The applicant, the department, and any other agency which reviewed the application, and other interested parties, including members of the public and representatives of consumers of health services, shall be permitted to give testimony and present arguments at the hearing without formally intervening. Such testimony and arguments shall be presented after the testimony of the applicant and DHH has been presented, or, at the discretion of the hearing officer, at any other convenient time. When such testimony is presented, all parties may cross-examine the witness.

10. A record of the hearing proceeding shall be maintained. Copies of such record together with copies of all documents received in evidence shall be available to the parties, provided that any party who requests copies of such material may be required to bear the costs thereof.

11. The hearing officer shall notify all parties, in writing or on the record, of the day on which the hearing will conclude and of any changes thereto; provided, a hearing must be concluded in accordance with the time requirements specified in Subsection C.3 of this Section. As soon as practicable, but not more than 45 days after the conclusion of a hearing, the hearing officer shall send to the applicant, the department, and to any interested parties who participated in the hearing, his written decision and the reasons for the decision. Such decisions shall be publicized by the department through local newspapers and public information channels. After rendering his decision, the hearing officer shall transmit the record of the hearing to the department.

12. An applicant who fails to have the disapproval reversed shall forfeit his filing fee.

13. Judicial review of the decision of the hearing officer shall be in accordance with the provisions of R.S. 49:964 provided, however, that only an applicant aggrieved by the decision of the hearing officer shall have the right to judicial review.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2116.

**HISTORICAL NOTE:** Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding the proposed rule. The deadline for the receipt of all written comments is 4:30 p.m. on June 28, 1995.

A public hearing on this proposed rule is scheduled for Tuesday, June 27, 1995 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.

Rose Forrest  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Facility Need Review**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The only estimated implementation cost which is anticipated will be the cost for promulgation of the proposed rule. This cost is estimated to be \$700.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of this rule will have no effect upon revenue collections of either state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule is projected to stimulate limited rebuilding of some older nursing homes. These facilities should be of some benefit to elderly residents, although minor inconvenience should be anticipated in patient relocation.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no known impact on competition or employment. More replacement nursing homes are projected to be constructed, while less new wings are projected to be constructed onto existing nursing homes.

Thomas D. Collins  
Director  
9505#056

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Labor  
Office of Workers' Compensation**

**Insurance Cost Containment (LAC 40:I.1113)**

Under the authority of the Workers' Compensation Act, particularly R.S. 23:1021 et seq., and in accordance with the provision 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 Insurance Cost Containment rules, LAC 40:I.Chapter 11.

The changes to this rule will clarify the requirements to participate in the occupational safety and health program and the procedures that will be used to evaluate an employer's application to participate in the program.

This proposed rule became effective on April 20, 1995 by emergency rule.

**Title 40**

**Labor and Employment**

**Part I. Workers' Compensation Administration**

**Chapter 11. Insurance Cost Containment**

**§1113. Application for Participation in the Occupational Safety and Health Program**

A. Only "eligible employers" who have certificate of attendance Form LDOL-WC-Form Number 1022 issued within the last four years may apply for participation in the Occupational Safety and Health program.

B. An application for participation in the Occupational Safety and Health Program shall consist of the following:

1. a properly completed form LDOL-OWC 1023;
2. a copy of the applicant's OSHA 200 log from the previous year;
3. a sworn statement that:
  - a. the company has written safety programs and training documentation as required by OSHA standards relevant to its facility for at least a six-month period;
  - b. the applicant's lost workday incident rate is less than the national average for its respective Standard Industrial Classification (SIC) code; and
  - c. the applicant company has experienced no fatalities within the 24 months immediately preceding the date of the application;
4. any additional information which the Occupational Safety and Health Section of the Office of Workers' Compensation Administration deems necessary to evaluate the application.

**C. Application Rejection**

1. The Occupational Safety and Health Section of the Office of Workers' Compensation Administration may reject:
  - a. any application which does not contain all requested information or which does not reflect a commitment to safety in the workplace;
  - b. an application at any time before the initial phase inspection is completed if it is determined that the company's



application contained false information or that a fatality has occurred since the application was submitted.

2. A company whose application is rejected due to a lack of commitment to safety or for an application containing false information shall be allowed to reapply no earlier than 12 months from the date of the rejection notice.

D. In scheduling surveys the OWCA will attempt to schedule on the basis of the date the application is received in the office but shall also consider the OSHA High Hazard list and geographical location for maximizing scheduling.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 23:1178.

**HISTORICAL NOTE:** Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 19:896 (July 1993), amended LR 21:

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than June 26, 1995, at 4:15 p.m., to Alvin J. Walsh, Director, Office of Workers' Compensation, Box 94040, Baton Rouge, LA 70804-9040 or 1001 North 23rd Street, Baton Rouge, LA 70802 or to FAX number (504) 342-5665.

Alvin J. Walsh  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Insurance Cost Containment**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no implementation cost for this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
This rule will not affect revenue collections for state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
This rule will not have any cost to directly affected persons because those employers excluded from evaluation for the discount program could not qualify for the discount if evaluated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
This rule will not affect competition and employment.

Alvin J. Walsh  
Assistant Secretary  
9505#034

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Labor  
Office of Workers' Compensation**

Medical Reimbursement Schedule (LAC 40:I.Chapter 51)

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 Medical Reimbursement Schedule and Billing Instructions, LAC 40:I.Chapter 51.

The changes to these rules will enable medical providers to utilize the same cost codes for both Medicare and workers' compensation claims.

This proposed rule has also been adopted as an emergency rule, effective June 1, 1995, the text of which may be viewed in its entirety in the emergency rule section of this May, 1995 *Louisiana Register*.

A copy of the complete medical reimbursement schedules can be viewed at the Office of Workers' Compensation, 1001 North 23rd Street, Baton Rouge, LA 70802. Contact Judy Albarado at (504) 342-7559 for information. The complete medical reimbursement schedules may also be viewed at the Office of the State Register, 1051 North Third Street, Baton Rouge, LA.

All interested persons are invited to submit written comments on the proposed regulations. Such comments should be submitted no later than 4:15 p.m. on June 26, 1995, to Alvin J. Walsh, Director, Office of Workers' Compensation, Box 94040, Baton Rouge, LA 70804-9040; or to the street address above; or through fax number (504) 342-6556.

Alvin J. Walsh  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Medical Reimbursement Schedule**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no cost to implement this update to the medical reimbursement schedule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no revenue to be collected by the update of the medical reimbursement schedule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The economic benefits to the employers or insurance carriers are undeterminable at this time. By the implementation of these 1995 CPT codes, the employers, carriers and health care providers will be using one coding system for their office keeping current with Medicare codes.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no effect on competition and employment.

Alvin J. Walsh  
Assistant Secretary  
9505#033

David W. Hood  
Senior Fiscal Analyst

## NOTICE OF INTENT

### Department of Natural Resources Office of Conservation

#### Hazardous Liquids Pipeline Safety (LAC 33:V.Subpart 3)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby proposes the following amendments to the hazardous liquids regulations.

#### Title 33

#### ENVIRONMENTAL QUALITY

#### Part V. Hazardous Waste and Hazardous Materials Subpart 3. Natural Resources

#### Chapter 301. Transportation of Hazardous Liquids by Pipeline

#### Subchapter A. General

#### §30103. Applicability

- A. ...
- B. This Chapter does not apply to:
1. - 2. ...
  3. transportation of non-HVL through low-stress pipelines, except for any pipeline or pipeline segment that is located:
    - a. in an onshore area other than a rural area;
    - b. offshore; or
    - c. in a waterway that is navigable in fact and currently used for commercial navigation;
  4. ...
  5. transportation of a hazardous liquid or carbon dioxide in offshore pipelines which are located upstream from the outlet flange of each facility where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;
  6. ...
  7. transportation of a hazardous liquid or carbon dioxide:
    - a. by vessel, aircraft, tank truck, tank car, or other nonpipeline mode of transportation; or
    - b. through facilities located on the grounds of a materials transportation terminal that are used exclusively to transfer hazardous liquid or carbon dioxide between nonpipeline modes of transportation or between a nonpipeline mode and a pipeline, not including any device and associated piping that are necessary to control pressure in the pipeline under §30265.B; and
  8. transportation of carbon dioxide downstream from the following point, as applicable:
    - a. the inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or
    - b. the connection of the first branch pipeline in the production field that transports carbon dioxide to injection wells or to headers or manifolds from which pipelines branch to injection wells.

C. A low-stress pipeline to which this Chapter applies that exists on July 12, 1994 need not comply with this Chapter or CFR Part 199 until July 12, 1996, except as follows:

1. Subchapter B of this Chapter applies beginning on October 10, 1994; and

2. any replacement, relocation, or other change made to existing pipelines after October 9, 1994 must comply with Subchapters A and C - E of this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:861 (August 1992), LR 20:439 (1994), LR 21:

#### §30105. Definitions

As used in this Chapter:

**Administrator**—the administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the secretary of transportation.

\* \* \*

**Corrosive Product**—"corrosive material" as defined by CFR 173.136 Class 8—Definitions of this Chapter.

\* \* \*

**Flammable Product**—"flammable liquid" as defined by CFR 173.120 Class 3—Definitions of this Chapter.

**Gathering Line**—a pipeline 219.1 mm (8-5/8 in.) or less nominal outside diameter that transports petroleum from a production facility.

\* \* \*

**In-Plant Piping System**—piping that is located on the grounds of a plant and used to transfer hazardous liquid or carbon dioxide between plant facilities or between plant facilities and a pipeline or other mode of transportation, not including any device and associated piping that are necessary to control pressure in the pipeline under §30265.B.

\* \* \*

**Low-Stress Pipeline**—a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

\* \* \*

**Petroleum**—crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas.

**Petroleum Product**—flammable, toxic, or corrosive products obtained from distilling and processing of crude oil, unfinished oils, natural gas liquids, blend stocks and other miscellaneous hydrocarbon compounds.

\* \* \*

**Rural Area**—outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development.

**Specified Minimum Yield Strength**—the minimum yield strength, expressed in pounds per square inch, prescribed by the specification under which the material is purchased from the manufacturer.

\* \* \*

*Toxic Product*—"poisonous material" as defined by CFR 173.132 Class 6, Division 6.1—Definitions of this Chapter.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:861 (August 1992), LR 21:

#### §30107. Matter Incorporated by Reference

A. Any document or portion thereof incorporated by reference in this Chapter is included in this Chapter as though it were printed in full. When only a portion of a document is referenced, then this Chapter incorporates only that referenced portion of the document and the remainder is not incorporated. Applicable editions are listed in Subsection C of this Section in parentheses following the title of the referenced material. Earlier editions listed in previous editions of this Section may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR for a listing of the earlier editions.

B. All incorporated materials are available for inspection in the Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC, and at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These materials have been approved for incorporation by reference by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, materials incorporated by reference are available as follows:

1. American Gas Association (AGA), 1515 Wilson Boulevard, Arlington, VA 22209.

2. American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005;

3. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017;

4. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NE., Vienna, VA 22180;

5. American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036;

6. American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103-1187.

C. The full title for the publications incorporated by reference in this Part are as follows. Numbers in parenthesis indicate applicable editions:

1. American Gas Association (AGA): AGA Pipeline Research Committee, Project PR-3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 1989). The RSTRENG program may be used for calculating remaining strength.

2. American Society of Mechanical Engineers (ASME):  
a. - b. ...

c. ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1989 with ASME/ANSI B31.8a-1990, B31.8b-1990, B31.8c-1992 Addenda and Special Errata

issued July 6, 1990 and Special Errata (Second) issued February 28, 1991);

d. ASME/ANSI B31G, "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

3. - 4.g. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 20:439 (1994), LR 21:

#### §30111. Conversion to Service Subject to this Chapter

A. A steel pipeline previously used in service not subject to this Chapter qualifies for use under this Chapter if the operator prepares and follows a written procedure to accomplish the following:

1. The design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in satisfactory condition for safe operation. If one or more of the variables necessary to verify the design pressure under §30161 or to perform the testing under Subsection A.4 of this Section is unknown, the design pressure may be verified and the maximum operating pressure determined by:

a. testing the pipeline in accordance with ASME B31.8, Appendix N, to produce a stress equal to the yield strength; and

b. applying to not more than 80 percent of the first pressure that produces a yielding, the design factor F in §30161.A and the appropriate factors in §30161.E.

2. - 3. ...

4. The pipeline must be tested in accordance with Subchapter E to substantiate the maximum operating pressure permitted by §30265.

B. - C. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

#### Subchapter B. Reporting Accidents and Safety-Related Conditions

##### §30125. Reporting Accidents

An accident report is required for each failure in a pipeline system subject to this Part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

1. - 5.d. ...

6. estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:863 (August 1992), amended LR 21:

##### §30127. Telephonic Notice of Certain Accidents

A. At the earliest practicable moment within two hours

following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in §30125, the operator of the system shall give notice, in accordance with §30127.B of any failure that:

1. - 2. ...

3. caused estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

4. - 5. ...

B. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:863 (August 1992), LR 20:440 (1994), LR 21:

### Subchapter C. Design Requirements

#### §30161. Internal Design Pressure

A. ...

B. The yield strength to be used in determining the internal design pressure under §30161.A is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength to be used in the design formula is one of the following:

1. the yield strength determined by performing all of the tensile tests of API Specification 5L on randomly selected specimens with the following number of tests:

Pipe Size	Number of Tests
Less than 168.3 mm (6-5/8 in.) nominal outside diameter	One test for each 200 lengths
168.3 through 323.8 mm (6-5/8 through 12-3/4 in.) nominal outside diameter	One test for each 100 lengths
Larger than 323.8 mm (12-3/4 in.) nominal outside diameter	One test for each 50 lengths

2. If the average yield-tensile ratio exceeds 0.85, the yield strength shall be taken as 165,474 kPa (24,000 psi). If the average yield tensile ratio is 0.85 or less, the yield strength of the pipe is taken as the lower of the following:

- eighty percent of the average yield strength determined by the tensile tests;
- the lowest yield strength determined by the tensile tests.

3. If the pipe is not tensile tested as provided in Subsection B, the yield strength shall be taken as 165,474 kPa (24,000 psi).

C. If the nominal wall thickness to be used in determining internal design pressure under §30161.A is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one end. However, if the pipe is of uniform grade, size, and thickness, only 10 individual lengths or five percent of all lengths, whichever is greater, need be

measured. The thickness of the lengths that are not measured must be verified by applying a gage set to the minimum thickness found by the measurement. The nominal wall thickness to be used is the next wall thickness found in commercial specifications that is below the average of all the measurement taken. However, the nominal wall thickness may not be more than 1.14 times the smallest measurement taken on pipe that is less than 508 mm (20 in.) nominal outside diameter, nor more than 1.11 times the smallest measurement taken on pipe that is 508 mm (20 in.) or more in nominal outside diameter.

D. - E. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 20:441 (1994), LR 21:

#### §30169. New Pipe

Any new pipe installed in a pipeline system must comply with the following:

1. - 2. ...

3. Each length of pipe with a nominal outside diameter of 114.3 mm (4-1/2 in.) or more must be marked on the pipe or pipe coating with the specification to which it was made, the specified minimum yield strength or grade, and the pipe size. The marking must be applied in a manner that does not damage the pipe or pipe coating and must remain visible until the pipe is installed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

#### §30177. Passage of Internal Inspection Devices

A. Except as provided in Subsections B and C of this Section, each new pipeline and each line section of a pipeline where the line pipe, valve, fitting or other line component is replaced; must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

B. This Section does not apply to:

- manifolds;
- station piping such as at pump stations, meter stations, or pressure reducing stations;
- piping associated with tank farms and other storage facilities;
- cross-overs;
- sizes of pipe for which an instrumented internal inspection device is not commercially available;
- offshore pipelines, other than main lines 10 inches or greater in nominal diameter, that transport liquids to onshore facilities; and
- other piping that the administrator under CFR Part 190 and Chapter 303 of this Subpart, finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

C. An operator encountering emergencies, construction time constraints and other unforeseen construction problems need not construct a new or replacement segment of a pipeline

to meet Subsection A of this Section, if the operator determines and documents why an impracticability prohibits compliance with paragraph A of this Section. Within 30 days after discovering the emergency or construction problem the operator must petition, under CFR Part 190 and Chapter 303 of this Subpart, for approval that design and construction to accommodate passage of instrumented internal inspection devices would be impracticable. If the petition is denied, within one year after the date of the notice of the denial, the operator must modify that segment to allow passage of instrumented internal inspection devices.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

#### **Subchapter D. Construction**

##### **§30201. Scope**

A. - B. ...

C. **Inspection—General.** Inspection must be provided to ensure the installation of pipe or pipeline systems in accordance with the requirements of this Subchapter. Each operator shall notify the Pipeline Safety Section of the Office of Conservation, Louisiana Department of Natural Resources, of proposed pipeline construction at least seven days prior to commencement of said construction. No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 20:441 (1994), LR 21:

##### **§30205. Bending of Pipe**

A. ...

B. Each field bend must comply with the following:

1. - 2. ...

3. on pipe containing a longitudinal weld, the longitudinal weld must be as near as practicable to the neutral axis of the bend unless:

a. ...

b. the pipe is 323.8 mm (12-3/4 in.) or less nominal outside diameter or has a diameter to wall thickness ratio less than 70;

c. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

##### **§30209. Welds and Welding Inspection: Standards of Acceptability**

A. ...

B. The acceptability of a weld is determined according to the standards in Section 6 of API Standard 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if the Appendix to API Standard 1104 applies to the weld, the acceptability of the weld may be determined under that appendix.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), LR 21:

##### **§30211. Welds**

A.1. - 3. ...

B. **Nondestructive Testing**

1. - 4. ...

5. all girth welds installed each day in the following locations must be nondestructively tested over their entire circumference, except that when nondestructive testing is impracticable for a girth weld, it need not be tested if the number of girth welds for which testing is impracticable does not exceed 10 percent of the girth welds installed that day:

6. ...

7. At pipeline tie-ins, including tie-ins of replacement sections, 100 percent of the girth welds must be nondestructively tested.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), LR 21:

##### **§30219. Installation of Pipe in a Ditch**

A. ...

B. Except for pipe in the Gulf of Mexico and its inlets, all offshore pipe in water at least 3.7 m (12 feet) deep but not more than 61 m (200 feet) deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

##### **§30221. Cover Over Buried Pipeline**

A. ...

B. Except for the Gulf of Mexico and its inlets, less cover than the minimum required by §30221.A and §30203 may be used if:

1. - 2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

##### **§30237. Pumping Equipment**

A. - C. ...

D. Except for offshore pipelines, pumping equipment must be installed on property that is under the control of the operator and at least 15.2 m (50 ft.) from the boundary of the pump station.

E. Adequate fire protection must be installed at each pump station. If the fire protection system installed requires the use of pumps, motive power must be provided for those pumps that is separate from the power that operates the station.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

### **Subchapter E. Hydrostatic Testing**

#### **§30247. General Requirements**

A. ...

B. Except for pipelines converted under §30111, the following pipelines may be operated without pressure testing under this Chapter:

1. Any hazardous liquid pipeline whose maximum operating pressure is established under §30265.A.5 that is:
  - a. an interstate pipeline constructed before January 8, 1971;
  - b. an interstate offshore gathering line constructed before August 1, 1977;
  - c. an intrastate pipeline constructed before October 21, 1985; or
  - d. a low-stress pipeline constructed before August 11, 1994 that transports HVL.
2. Any carbon dioxide pipeline constructed before July 12, 1991, that:
  - a. has its maximum operating pressure established under §30265.A.5; or
  - b. is located in a rural area as part of a production field distribution system.
3. Any low-stress pipeline constructed before August 11, 1994 that does not transport HVL.

C. Except for pipelines that transport HVL onshore and low-stress pipelines, the following compliance deadlines apply to pipelines under B.1 and B.2.a of this Section that have not been pressure tested under this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

#### **§30249. Testing**

A. Testing of Components

1. ...

2. A component, other than pipe, that is the only item being replaced or added to the pipeline system need not be hydrostatically tested under §30249.A if the manufacturer certifies that either:

a. - b. ...

B. Test Medium

1. Except as provided in §30249.B, C, and D of this Section, water must be used as the test medium.

2. - 3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:864 (August 1992), LR 21:

### **Subchapter F. Operation and Maintenance**

#### **§30257. General Requirements**

A. - B. ...

C. Except as provided by §30111, no operator may operate

any part of any of the following pipelines unless it was designed and constructed as required by this Chapter:

1. an interstate pipeline, other than a low-stress pipeline, on which construction was begun after March 31, 1970, that transports hazardous liquid;
2. an interstate offshore gathering line, other than a low-stress pipeline, on which construction was begun after July 31, 1977, that transports hazardous liquid;
3. an intrastate pipeline, other than a low-stress pipeline, on which construction was begun after October 20, 1985, that transports hazardous liquid;
4. ...
5. a low-stress pipeline on which construction was begun after August 10, 1994.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:864 (August 1992), amended LR 21:

#### **§30259. Procedural Manual for Operations, Maintenance, and Emergencies**

A. - B. ...

C. Maintenance and Normal Operations. The manual required by §30259.A must include procedures for the following to provide safety during maintenance and normal operations:

1. - 13. ...

14. taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and, a rescue harness and line.

D. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:864 (August 1992), LR 21:

#### **§30265. Maximum Operating Pressure**

A. Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

1. the internal design pressure of the pipe determined in accordance with §30161. However, for steel pipe in pipelines being converted under §30111, if one or more factors of the design formula (§30161) are unknown, one of the following pressures is to be used as design pressure:

- a. eighty percent of the first test pressure that produces yield under section N5.0 of Appendix N of ASME B31.8, reduced by the appropriate factors in 30161.A and E; or
- b. if the pipe is 323.8 mm (12-3/4 in.) or less outside diameter and is not tested to yield under this Paragraph, 1379 kPa (200 psig).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:753.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

**§30271. Inspection of Rights-of-Way and Crossings Under Navigable Waters**

A. Each operator shall, at intervals not exceeding three weeks, but at least 26 times each calendar year, inspect the surface conditions on or adjacent to each pipeline right-of-way. Methods of inspection include walking, driving, flying or other appropriate means of traversing the right-of-way.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

**§30272. Underwater Inspection and Reburial of Pipelines in the Gulf of Mexico and its Inlets**

A. Except for gathering lines of 114.3 mm (4-1/2 in.) nominal outside diameter or smaller, each operator shall, in accordance with this Section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.

B.1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 18:865 (August 1992), amended LR 21:

**§30273. Cathodic Protection**

A. ...

B. Each operator shall electrically inspect each bare hazardous liquid interstate pipeline, other than a low-stress pipeline, before April 1, 1975; each bare hazardous liquid intrastate pipeline, other than a low-stress pipeline, before October 20, 1990; each bare carbon dioxide pipeline before July 12, 1994; and each bare low-stress pipeline before July 12, 1996 to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. §30275.F and §30275.G apply to all corroded pipe that is found.

C. Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on hazardous liquid interstate pipelines, other than low-stress pipelines, before April 1, 1973; on hazardous liquid intrastate pipelines, other than low-stress pipelines, before October 20, 1988; on carbon dioxide pipelines before July 12, 1994; and on low-stress pipelines before July 12, 1996 as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 18:865 (August 1992), LR 21:

**§30275. External Corrosion Control**

A. Each operator shall, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on

each buried, in contact with the ground, or submerged pipeline facility in its pipeline system that is under cathodic protection to determine whether the protection is adequate.

B. - G. ...

H. The strength of the pipe, based on actual remaining wall thickness, for Subsections F and G of this Section may be determined by the procedure in ASME B31G manual for Determining the Remaining Strength of Corroded Pipelines or by the procedure developed by AGA/Battelle—A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe (with RSTRENG disk). Application of the procedure in the ASME B31G manual or the AGA/Battelle Modified Criterion is applicable to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the respective procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 21:

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, at 9 a.m., June 26, 1995.

At such hearing the commissioner of administration will consider evidence relative to the proposed amendments to the hazardous liquids pipeline safety regulations.

The proposed amendments represent the views of the commissioner as of this date; however, the commissioner reserves the right to make additions or deletions prior to final adoption.

Comments and views regarding the proposed amendments should be directed in written form to be received not later than 5 p.m., June 22, 1995. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. If accommodations are required under the Americans with Disabilities Act, please contact the Pipeline Division at (504)342-5516 within 10 working days of the hearing date. Direct comments to: Ernest A. Burguières, III, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275 RE: Docket No. PL 95-048. All parties having interest in the aforesaid shall take notice.

Ernest A. Burguières, III  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Hazardous Liquids  
Pipeline Safety**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no increase in 1995-96 fiscal year, this regulation amends existing regulations. Administration will be carried out with existing personnel.



II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed amendments will not have any costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments will not have any effect on competition and employment.

Mariano G. Hinojosa  
Director  
9505#050

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

**Natural Gas Pipeline Safety  
(LAC 43:XIII.Chapters 1,5,11,17,21,27 and 29)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby proposes adoption of the following amendments to the pipeline safety regulations.

**Title 43**

**NATURAL RESOURCES**

**Part XIII. Office of Conservation - Pipeline Safety**

**Subpart 1. General Provisions**

**Chapter 1. General**

**§125. Definitions**

*Administrator*—the administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the secretary of transportation.

\* \* \*

*Line Section*—continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a block valve, or between adjacent block valves.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 18:852 (August 1992), LR 20:442 (1994), LR 21:

**Chapter 5. Class Locations**

**§503. Gathering Lines and Petroleum Gas Systems**

A. Gathering Lines. Except as provided in §§101 and 1112, each operator of a gathering line must comply with the requirements of this Part applicable to transmission lines.

B. 1. - 3. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:443 (1994), LR 21:

**Chapter 11. Pipeline Design Requirements**

**§1112. Passage of Internal Inspection Devices**

A. Except as provided in Subsections B and C of this Section, each new transmission line and each line section of a transmission line where the line pipe, valve, fitting, or other line component is replaced must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

B. This Section does not apply to:

1. manifolds;
2. station piping such as at compressor stations, meter stations, or regulator stations;
3. piping associated with storage facilities, other than a continuous run of transmission line between a compressor station and storage facilities;
4. cross-overs;
5. sizes of pipe for which an instrumented internal inspection device is not commercially available;
6. transmission lines, operated in conjunction with a distribution system which are installed in Class 4 locations;
7. offshore pipelines, other than transmission lines 10 inches or greater in nominal diameter, that transport gas to onshore facilities; and
8. other piping that, under CFR Part 190 and LAC 43:XI, the administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

C. An operator encountering emergencies, construction time constraints or other unforeseen construction problems need not construct a new or replacement segment of a transmission line to meet Subsection A of this Section, if the operator determines and documents why an impracticability prohibits compliance with Subsection A of this Section. Within 30 days after discovering the emergency or construction problem the operator must petition, under CFR Part 190 and LAC 43:XI, for approval that design and construction to accommodate passage of instrumented internal inspection devices would be impracticable. If the petition is denied, within one year after the date of the notice of the denial, the operator must modify that segment to allow passage of instrumented internal inspection devices.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 21:

**Chapter 17. Transmission Line Construction**

**§1705. Inspection: General**

Each transmission line or main must be inspected to ensure that it is constructed in accordance with this Part. Each operator shall notify the Pipeline Safety Section of the Office of Conservation, Louisiana Department of Natural Resources of any new proposed pipeline construction or replacement on transmission lines or mains at least 48 hours prior to



commencement of said construction for a total length of one mile or more.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 20:446 (1994), amended LR 21:

## **Chapter 21. Corrosion Requirements**

### **§2105. General**

The corrosion control procedures required by §2705.A.2, including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 21:

## **Chapter 27. General Operating Requirements**

### **§2703. General Provisions**

A. ...

B. Each operator shall keep records necessary to administer the procedures established under §2705.

C. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 18:857 (August 1992), LR 21:

### **§2705. Procedural Manual for Operations, Maintenance, and Emergencies**

A. General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

B. Maintenance and Normal Operations. The manual required by §2705.A must include procedures for the following to provide safety during maintenance and operations:

1. operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this Subpart and Chapter 29;

2. controlling corrosion in accordance with the operations and maintenance requirements of Chapter 21;

3. making construction records, maps, and operating history available to appropriate operating personnel;

4. gathering of data needed for reporting incidents under Chapter 3 in a timely and effective manner;

5. starting up and shutting down any part of the pipeline in a manner designed to assure operation within the MAOP limits prescribed by this Part, plus the build-up allowed for operation of pressure-limiting and control devices;

6. maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service;

7. starting, operating and shutting down gas compressor units;

8. periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found;

9. taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and a rescue harness and line;

10. systematic and routine testing and inspection of pipe-type or bottle-type holders including:

a. provision for detecting external corrosion before the strength of the container has been impaired;

b. periodic sampling and testing of gas in storage to determine the dew point of vapors contained in the stored gas which, if condensed, might cause internal corrosion or interfere with the safe operation of the storage plant; and

c. periodic inspection and testing of pressure limiting equipment to determine that it is in safe operating condition and has adequate capacity.

C. Abnormal Operation. For transmission lines, the manual required by §2705.A must include procedures for the following to provide safety when operating design limits have been exceeded:

1. responding to, investigating, and correcting the cause of:

a. unintended closure of valves or shutdowns;

b. increase or decrease in pressure or flow rate outside normal operating limits;

c. loss of communications;

d. operation of any safety device; and

e. any other malfunction of a component, deviation from normal operation, or personnel error which may result in a hazard to persons or property.

2. Checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation.

3. Notifying responsible operator personnel when notice of an abnormal operation is received.

4. Periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found.

D. Safety-Related Condition Reports. The manual required by §2705.A must include instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of §321.

E. Surveillance, Emergency Response, and Accident Investigation. The procedures required by §§2713.A, 2717, and 2719 must be included in the manual required by §2705.A.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 21:

### **§2718. Public Education**

Each operator shall establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator of the appropriate public officials. The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 21:

### **§2725. Odorization of Gas**

#### **A. - F.3 ...**

G. Equipment for malodorization must introduce the malodorant without wide variations in the level of malodorant. The method of using malodorant and the containers and equipment used are subject to the approval of the commissioner of conservation and must meet the following requirements:

#### **1. - 4. ...**

5. at the request of any gas company or affected person or upon the request of the commissioner of conservation, the Office of Conservation shall determine, after examination of any gas having a natural malodorant, the necessary rate of injection of additional malodorant, if any, which shall be necessary to meet the requirements of Subsection B herein as an exception to the approved injection rates;

6. the person subject to these rules must provide sufficient test points within each distribution system for use by the commissioner's staff to check the adequacy of odorization within the system. The test points must be of 1/4 inch threaded tap with pressure not to exceed five psi and located at remote locations approved by the commissioner.

#### **H. Quarterly Reports**

#### **1. ...**

2. Each person subject to these rules (excluding "master meter systems") shall record and retain on file for review by the Office of Conservation the following information:

#### **a.-b. ...**

c. the quantity of gas odorized by each malodorant agent used during each quarter. Reports on usage of odorant shall be made annually for Farm Taps.

#### **3. ...**

#### **I. ...**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended

LR 10:503 (July 1984), LR 20:447 (April 1994), amended LR 21:  
**Chapter 29. Maintenance Requirements**

### **§2907. Transmission Lines: Leakage Surveys**

Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with §2727 without an odor or odorant, leakage surveys using leak detector equipment must be conducted:

1. in Class 3 locations, at intervals not exceeding seven and one-half months, but at least twice each calendar year; and
2. in Class 4 locations, at intervals not exceeding four and one-half months, but at least four times each calendar year.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 21:

### **§2923. Distribution Systems: Patrolling, Leakage Surveys and Procedures**

#### **A.1. - 2. ...**

#### **B. Leakage Surveys and Procedures**

1. Each operator of a distribution system shall conduct periodic leakage surveys in accordance with this Section.

2. The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements:

a. a leakage survey with leak detector equipment must be conducted in business districts, including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at intervals not exceeding 15 months, but at least once each calendar year;

b. a leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at intervals not exceeding five years. However, for cathodically unprotected distribution lines subject to §2117.E on which electrical surveys for corrosion are impractical, survey intervals may not exceed three years.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 21:

### **§2927. Abandonment or Deactivation of Facilities**

A. Each operator shall conduct abandonment or deactivation of pipeline in accordance with the requirements of this Section.

#### **B. - F. ...**

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 21:

### **§2929. Compressor Stations: Procedures for Gas Compressor Units**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), repealed LR 21:

**§2933. Compressor Stations: Isolation of Equipment for Maintenance or Alterations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), repealed LR 21:

**§2936. Compressor Stations: Gas Detection**

A. Not later than September 16, 1996, each compressor building in a compressor station must have a fixed gas detection and alarm system, unless the building is:

1. constructed so that at least 50 percent of its upright side area is permanently open; or
2. located in an unattended field compressor station of 1,000 horsepower or less.

B. Except when shutdown of the system is necessary for maintenance under §2936.C, each gas detection and alarm system required by this Section must:

1. continuously monitor the compressor building for a concentration of gas in air of not more than 25 percent of the lower explosive limit; and
2. if that concentration of gas is detected, warn persons about to enter the building and persons inside the building of the danger.

C. Each gas detection and alarm system required by this Section must be maintained to function properly. The maintenance must include performance tests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 21:

**§2937. Pipe-Type and Bottle-Type Holders: Plan for Inspection and Testing**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), repealed LR 21:

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA at 9 a.m., June 26, 1995.

At such hearing, the commissioner of conservation will consider evidence relative to the proposed amendments to the natural and other gas pipeline safety regulations.

The proposed amendments represent the views of the commissioner as of this date; however, the commissioner reserves the right to make additions or deletions prior to final adoption.

Comments and views regarding the proposed amendments should be directed in written form to be received not later than 5 p.m., June 22, 1995. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. If accommodations are required under the Americans with Disabilities Act, please contact the Pipeline Division at (504)342-5516, within 10 working days of the hearing date. Direct comments to Ernest A. Burguières, III, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275, RE: Docket No. PL 95-046. All parties having interest in the aforesaid shall take notice.

Ernest A. Burguières, III  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Natural Gas Pipeline Safety**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no increase in 1995-96 fiscal year, this regulation amends existing regulations. Administration will be carried out with existing personnel.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed amendments will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed amendments will not have any costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed amendments will not have any effect on competition and employment.

Mariano G. Hinojosa  
Director of Pipelines  
9505#051

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

**Pipeline Operation (LAC 43:XI.133)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Conservation hereby proposes the following amendments to the pipeline operations regulations.

**Title 43**

**NATURAL RESOURCES**

**Part XI. Office of Conservation - Pipeline Division**

**Subpart 1. Natural Gas and Coal**

**Chapter 1. Natural Gas and Coal**

**§133. Transportation of Intrastate Natural Gas and the Construction, Extension, Acquisition and Operation of Facilities or Extensions Thereof for the Purpose of Acquisition of Gas Supplies Within a Gas Supply Acquisition Service Area or Transportation of Gas Supplies for Others Within a Gas Supply Transportation Service Area Pursuant to the Provisions of Section 555(F) of the Act**

A. This regulation shall apply to the requirements placed by Section 555(F) of the act upon an intrastate natural gas transporter relative to the transportation of intrastate natural gas and the construction, extension, acquisition and operation of facilities, or extensions thereof, for the purpose of acquisition of gas supplies within a gas supply acquisition service area or transportation of gas supplies for others within a gas supply transportation service area.

B. Each transporter owning or operating an intrastate pipeline, the construction and operation of which has been approved by order of the commissioner under Section 555(C) of the act, shall have the right to apply to the commissioner for the establishment of a gas supply acquisition service area or gas supply transportation service area. Within such gas supply acquisition service area or gas supply transportation service area a transporter may at its option enlarge or extend its facilities, by construction or acquisition, for the purpose of acquiring or transporting for others additional supplies of natural gas. All applications by the transporter filed with the commissioner requesting the establishment of a gas supply acquisition service area or gas supply transportation service area shall be in writing, verified under oath by an individual having authority, shall be in the form approved by the commissioner, shall be noticed upon interested parties by publication in the official journal of the State of Louisiana and the official journal of each parish within which the gas supply acquisition service area or gas supply transportation service area will be located, and shall contain the information required by §125. All information required to be included within the application which has been presented to the commissioner through prior hearing evidence and all records and documents in the possession of the commissioner filed pursuant to the Natural Resources and Energy Act of 1973 may be incorporated in the application by reference. Each application shall include a map depicting the location of the transporter's existing intrastate pipeline to which facilities constructed or acquired pursuant to this regulation shall connect.

C. All orders of the commissioner establishing gas supply acquisition service areas or gas supply transportation service areas shall be subject to the following limitations and restrictions.

1. **Location.** A gas supply acquisition service area or gas supply transportation service area shall be located adjacent to the applicant's existing pipeline facilities.

2. ...

3. **Duration.** An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall remain in effect until terminated by subsequent order of the commissioner.

4. **Interconnections.** An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall not permit a transporter to connect its facilities located within the gas supply acquisition service area or gas supply transportation service area to another pipeline system, including other pipelines or pipeline systems owned by the transporter.

5. **Sales.** An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall not permit a transporter to construct, extend, acquire or operate facilities, or extensions thereof, within such gas supply acquisition service area or gas supply transportation service area for the purpose of connecting such transporter's facilities to a customer and making sales of gas to such customer.

6. **Abandonment of Facilities.** An order of the commissioner establishing a gas supply acquisition service area or gas supply transportation service area shall not permit a transporter to abandon all or any portion of its facilities subject to the jurisdiction of the commissioner, or any service rendered by means of such facilities, within such gas supply acquisition service area or gas supply transportation service area.

7. **Facilities Not Subject to Jurisdiction of Commissioner.** An order of the commissioner shall not establish gas supply acquisition service areas or gas supply transportation service areas in conjunction with facilities which are not subject to the jurisdiction of the commissioner under the act.

8. **Notice and Prohibition of Proposed Enlargement or Extension.** Prior to enlarging or extending its facilities within a gas supply acquisition service area or gas supply transportation service area, a transporter shall give the commissioner 20 days notice, on a form approved by the commissioner, of the location, size, nature and purpose of the proposed enlargement or extension. The notice shall be contemporaneously mailed to those persons who are identified in the ad valorem tax records of the parish as the owners of the land to be traversed by the proposed facility, with notice that objections to the proposed facility, must be made to the commissioner, in writing, within 10 days of the date of the notice. The commissioner may, within such 20-day period, beginning on the date of receipt of the written notice in the Office of Conservation, prohibit the proposed construction or acquisition under the order establishing the gas supply acquisition service area or gas supply transportation service area and require the transporter to apply for an order to construct and operate the proposed facilities pursuant to Section 555(C) of the act. Upon request by the transporter, the commissioner may notify the transporter verbally, to be immediately confirmed in writing prior to the end of the 20-day notice period that he has no objection to the construction or acquisition of the proposed facility and that the transporter may immediately construct or acquire and operate the proposed facility.

D. ...

E. A transporter who has been issued an order establishing a gas supply acquisition service area or gas supply transportation service area may make application for an extension or the establishment of additional gas supply acquisition service area or gas supply transportation service area in connection with an application made pursuant to Section 555(C) of the act.

F. The commissioner shall issue written confirmation to a transporter that the proposed construction, extension, acquisition and operation of facilities, or extensions thereof, within a gas supply acquisition service area or gas supply transportation service area is authorized by and in compliance with the order establishing the gas supply acquisition service area or gas supply transportation service area. Such confirmation shall be on a form adopted by the commissioner and shall be issued within 10 days after the end of the notification period provided in Subsection C.8 of this regulation.

G. ...

H. Nothing contained in this regulation shall be construed as a limitation upon the power of the commissioner to order overlapping gas supply acquisition service areas or gas supply transportation service areas for service of an area already being served by another transporter.

I. Any action taken by a transporter within a gas supply acquisition service area or gas supply transportation service area shall be subject to all other rules and regulations pursuant to R.S. 30:501 et seq. and the Louisiana Constitution of 1974.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501-599, 601-606.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 7:80 (March 1981), amended LR 21:

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA at 9 a.m., June 26, 1995.

At such hearing, the commissioner of conservation will consider evidence relative to the proposed amendments governing pipeline operations.

The proposed amendments represent the views of the commissioner as of this date; however, the commissioner reserves the right to make additions or deletions prior to final adoption.

Comments and views regarding the proposed amendments should be directed in written form to be received not later than 5 p.m., June 22, 1995. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. If accommodations are required under the Americans with Disabilities Act, please contact the Pipeline Division at (504)342-5516, within 10 working days of the hearing date. Direct comments to Ernest A. Burguières, III, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275, RE: Docket No. PL

95-046. All parties having interest in the aforesaid shall take notice.

Ernest A. Burguières, III  
Commissioner of Conservation

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pipeline Operations**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There will be no increase in 1995-96 fiscal year, this regulation amends existing regulations. Administration will be carried out with existing personnel.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
The proposed amendments will have no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
The proposed amendments will not have any costs and/or economic benefits to directly affected persons or nongovernmental groups. This amendment will allow the operator administrative approval to transport gas for others without the cost presently incurred by public hearing.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The proposed amendments will not have any effect on competition and employment.

Marino G. Hinojosa  
Director of Pipelines  
9505#052

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Natural Resources  
Office of Conservation**

**Pipeline Safety—Drug Testing/Alcohol  
Misuse (LAC 43:XIII.Chapters 31 and 33)**

**Title 43  
NATURAL RESOURCES**

**Part XIII. Office of Conservation - Pipeline Safety  
Subpart 1. General Provisions**

**Chapter 31. Drug Testing  
§3101. Scope and compliance**

A. This Chapter requires operators of pipeline facilities subject to CFR Part 192, 193, or 195 to test employees for the presence of prohibited drugs and provide an employee assistance program. However, this Chapter does not apply to operators of "master meter systems" as defined in §301 of this Chapter or to liquefied petroleum gas (LPG) operators.

B. - C. ...

D. This Chapter is not effective until August 20, 1995, with respect to any employee located outside the territory of the United States.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:532 (June 1990), amended LR 18:852 (August 1992), LR 21:

### §3103. Definitions

\* \* \*

**Positive Rate**—the number of positive results for random drug tests conducted under this Chapter plus the number of refusals of random tests required by this Chapter, divided by the total number of random drug tests conducted under this Chapter plus the number of refusals of random test required by this Chapter.

\* \* \*

**Refuse to Submit**—a covered employee fails to provide a urine sample as required by 49 CFR Part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this Chapter, or engages in conduct that clearly obstructs the testing process.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:532 (June 1990), amended LR 18:852 (August 1992), LR 21:

### §3107. Anti-Drug Plan

A. Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this Chapter and the DOT procedures. The plan must contain:

1. ...
2. the name and address of each laboratory that analyzes the specimens collected for drug testing; and
3. the name and address of the operator's medical review officer; and,
4. procedures for notifying employees of the coverage and provisions of the plan.

B. the administrator or the state agency that has submitted a current certification under Section 5(a) of the Natural Gas Pipeline Safety Act or Section 205(a) of the Hazardous Liquid Pipeline Safety Act with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant state procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:134 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 18:852 (August 1992), LR 21:

### §3111. Drug Tests Required

A. Each operator shall conduct the following drug tests for the presence of a prohibited drug:

1. - 2. ...

B.1. - 3. ...

#### C. Random Testing

1. Except as provided in Subsection C.2-4 of this Section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

2. The administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this Chapter. In order to ensure reliability of the data, the administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the administrator will publish in the *Federal Register* the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

3. When the minimum annual percentage rate for random drug testing is 50 percent, the administrator may lower this rate to 25 percent of all covered employees if the administrator determines that the data received under the reporting requirements of §3125 for two consecutive calendar years indicate that the reported positive rate is less than 1 percent.

4. When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §3125 for any calendar year indicate that the reported positive rate is equal to or greater than 1 percent, the administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

5. The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

6. The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this Chapter or any DOT drug testing rule.

7. Each operator shall ensure that random drug tests conducted under this Chapter are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

8. If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same operator, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

9. If an operator is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the operator may:

a. establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

b. randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:135 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 21:

#### §3117. Retention of Samples and Retesting

A. ...

B. If the MRO determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, the original sample must be retested if the employee makes a written request for retesting within 60 days of receipt of the final test result from the MRO. The employee may specify retesting by the original laboratory that is certified by the Department of Health and Hospitals. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the retest is negative.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:136 (February 1990), repromulgated LR 16:535 (June 1990), amended LR 21:

#### §3123. Recordkeeping

A. Each operator shall keep the following records for the periods specified and permit access to the records as provided by Subsection B of this Section:

1. ...

2. Records of employee drug test results that show employees who had a positive test, and the type of test (e.g., post-accident), and records that demonstrate rehabilitation, if any, must be kept for at least five years, and include the following information:

a. the function performed by each employee who had a positive drug test;

b. the prohibited drugs which were used by an employee who had a positive drug test;

c. the disposition of each employee who had a positive drug test or refused a drug test (e.g., termination,

rehabilitation, removed from covered function, other).

3. Records of employee drug test results that show employees passed a drug test must be kept for at least one year.

4. - 5. ...

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:136 (February 1990), repromulgated LR 16:535 (June 1990), amended LR 21:

#### §3125. Reporting of Anti-Drug Testing Results

A. Each large operator (having more than 50 covered employees) shall submit an annual Management Information System MIS report to RSPA of its anti-drug testing results in the form and manner prescribed by the administrator, not later than March 15 of each year for the prior calendar year (January 1 - December 31). The administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

B. Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, Room 2335, 400 Seventh Street, SW., Washington, DC 20590, and concurrently to the Commissioner of Conservation, Office of Conservation, Box 94275, Baton Rouge, LA 70804-9275.

C. Each report shall be submitted in the form and manner prescribed by the administrator. No other form, including another DOT Operating Administration's MIS form, is acceptable for submission to RSPA.

D. Each report shall be signed by the operator's anti-drug program manager or designated representative.

E. Each operator's report with verified positive test results or refusals to test shall include all of the following informational elements:

1. number of covered employees;

2. number of covered employees subject to testing under the anti-drug rules of another operating administration;

3. number of specimens collected by type of test;

4. number of positive test results, verified by a Medical Review Officer (MRO), by type of test and type of drug;

5. number of employee actions taken following verified positives, by type of actions;

6. number of negative tests reported by an MRO by type of test;

7. number of persons denied a position as a covered employee following a verified positive drug test;

8. number of covered employees, returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule;

9. number of covered employees with tests verified positive by an MRO for multiple drugs;

10. number of covered employees who refused to submit to a random or nonrandom (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal;



11. number of supervisors who have received required initial training during the reporting period.

F. Each operator's report with only negative test results shall include all of the following informational elements:

1. number of covered employees;
2. number of covered employees subject to testing under the anti-drug rules of another operating administration;
3. number of specimens collected by type of test;
4. number of negative tests reported by an MRO by type of test;
5. number of covered employees who refused to submit to a random or nonrandom (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal;
6. number of supervisors who have received required initial training during the reporting period.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### **Chapter 33. Alcohol Misuse Prevention Program**

#### **§3301. Purpose**

The purpose of this Chapter is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to LAC 43:XI, LAC 43:XIII, and LAC 33:V.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

#### **§3303. Applicability**

This Chapter applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to LAC 43:XI, LAC 43:XIII, and LAC 33:V. However, this Chapter does not apply to operators of master meter systems defined in LAC 43:XIII.303 or liquefied petroleum gas (LPG) operators as discussed in LAC 43:XIII.503.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

#### **§3305. Alcohol Misuse Plan**

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this Chapter and the DOT procedures in 49 CFR part 40. The plan shall contain methods and procedures for compliance with all the requirements of this Chapter, including required testing, recordkeeping, reporting, education and training elements.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

#### **§3307. Alcohol Testing Procedures**

Each operator shall ensure that all alcohol testing conducted under this Chapter complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to operators by this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### **§3309. Definitions**

As used in this Chapter:

**Accident**—an incident reportable under CFR part 191 involving gas pipeline facilities or LNG facilities, or an accident reportable under LAC 33:V involving hazardous liquid or carbon dioxide pipeline facilities.

**Administrator**—the administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

**Alcohol**—the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

**Alcohol Concentration (or Content)**—the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this Chapter.

**Alcohol Use**—the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

**Confirmation Test**—a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

**Consortium**—an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this Chapter or other DOT alcohol testing rules and that acts on behalf of the operators.

**Covered Employee**—a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by LAC 43:XI, LAC 43:XIII, and LAC 33:V. *Covered employee* and *individual or individual to be tested* have the same meaning for the purposes of this Chapter. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to LAC 43:XI, LAC 43:XIII, and LAC 33:V. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

**Covered Function (Safety-Sensitive Function)**—an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by LAC 43:XI, LAC 43:XIII, and LAC 33:V.

**DOT Agency**—an agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, 135; 49 CFR parts 199, 219, 382, and 654) in accordance with 49 CFR part 40.

**Employer or Operator**—a person who owns or operates a pipeline or LNG facility subject to LAC 43:XI, LAC 43:XIII, and LAC 33:V.

**Performing (a Covered Function)**—an employee is considered to be performing a covered function (safety-sensitive function) during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

**Refuse to Submit (to an Alcohol Test)**—a covered employee fails to provide adequate breath for testing without

a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this Chapter, or engages in conduct that clearly obstructs the testing process.

**Screening Test**—an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

**State Agency**—an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under Section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or Section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

**Substance Abuse Professional**—a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3311. Preemption of State and Local Laws

A. Except as provided in Subsection B, this Chapter preempts any state or local law, rule, regulation, or order to the extent that:

1. compliance with both the state or local requirement and this Chapter is not possible;

2. compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this Chapter; or

3. the state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

B. This Chapter shall not be construed to preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3313. Other Requirements Imposed by Operators

Except as expressly provided in this Chapter, nothing in this Chapter shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3315. Requirement for Notice

Before performing an alcohol test under this Chapter, each operator shall notify a covered employee that the alcohol test is required by this Chapter. No operator shall falsely represent that a test is administered under this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3317. Starting Date for Alcohol Testing Programs

A. Large Operators. Each operator with more than 50 covered employees on February 15, 1994 shall implement the requirements of this Chapter beginning on January 1, 1995.

B. Small Operators. Each operator with 50 or fewer covered employees on February 15, 1994 shall implement the requirements of this Chapter beginning on January 1, 1996.

C. All operators commencing operations after February 15, 1994 shall have an alcohol misuse program that conforms to this Chapter by January 1, 1996, or by the date an operator begins operations, whichever is later.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3319. Alcohol Concentration

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3321. On-Duty Use

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3323. Pre-Duty Use

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### **§3325. Use Following an Accident**

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under §3329.A, or the operator has determined that the employee's performance could not have contributed to the accident.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### **§3327. Refusal to Submit to a Required Alcohol Test**

Each operator shall require a covered employee to submit to a post-accident alcohol test required under §3329.A.1, a reasonable suspicion alcohol test required under §3329.A.2, or a follow-up alcohol test required under §3329.A.4. No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### **§3329. Alcohol Tests Required**

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

#### **1. Post-Accident**

a. As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this Section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

b. If a test required by this Section is not administered within two hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by Subsection A.1 is not administered within eight hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

c. For the years stated in this paragraph, employers who submit MIS reports shall submit to RSPA each record of a test required by this section that is not completed within eight hours. The employer's records of tests that could not be completed within eight hours shall be submitted to RSPA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- i. type of test (reasonable suspicion/post-accident);
- ii. triggering event (including date, time, and

location);

iii. employee category (do not include employee name or other identifying information);

iv. reasons test could not be completed within eight hours; and,

v. if blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

d. A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this Section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

#### **2. Reasonable Suspicion Testing**

a. Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this Chapter.

b. The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

c. Alcohol testing is authorized by this Section only if the observations required by Paragraph 2.b of this Section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this Chapter. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

d.i. If a test required by this Section is not administered within two hours following the determination under Paragraph 2.b of this Section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this Section is not administered within eight hours following the determination under Paragraph 2.b of this Section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to RSPA upon request of the administrator.

ii. For the years stated in this Paragraph, employers who submit MIS reports shall submit to RSPA each record of a test required by this Section that is not completed within

eight hours. The employer's records of tests that could not be completed within eight hours shall be submitted to RSPA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (a). type of test (reasonable suspicion/post-accident);
- (b). triggering event (including date, time, and location);
- (c). employee category (do not include employee name or other identifying information);
- (d). reasons test could not be completed within eight hours; and,
- (e). if blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

iii. Notwithstanding the absence of a reasonable suspicion alcohol test under this Section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

- (a). an alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
- (b). the start of the employee's next regularly scheduled duty period, but not less than eight hours following the determination under Paragraph 2.b of this Section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this Chapter.

iv. Except as provided in Paragraph 2.d.ii, no operator shall take any action under this Chapter against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this Chapter from taking any action otherwise consistent with law.

3. Return-to-Duty Testing. Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§3319-3327, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

4. Follow-Up Testing

a. Following a determination under §3347.B that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of §3347.C.2.i.

b. Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

5. Retesting of Covered Employees With an Alcohol Concentration of 0.02 or Greater but Less Than 0.04. Each operator shall retest a covered employee to ensure compliance with the provisions of §3341, if an operator chooses to permit the employee to perform a covered function within eight hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

**§3331. Retention of Records**

A. General Requirement. Each operator shall maintain records of its alcohol misuse prevention program as provided in this Section. The records shall be maintained in a secure location with controlled access.

B. Period of Retention. Each operator shall maintain the records in accordance with the following schedule:

1. Five Years. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years.

2. Two Years. Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of two years.

3. One Year. Records of all test results below 0.02 (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

C. Types of Records. The following specific records shall be maintained:

- 1. Records related to the collection process:
  - a. collection log books, if used;
  - b. calibration documentation for evidential breath testing devices;
  - c. documentation of breath alcohol technician training;
  - d. documents generated in connection with decisions to administer reasonable suspicion alcohol tests;
  - e. documents generated in connection with decisions on post-accident tests;
  - f. documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

- 2. Records related to test results:
  - a. the operator's copy of the alcohol test form, including the results of the test;
  - b. documents related to the refusal of any covered employee to submit to an alcohol test required by this Chapter;
  - c. documents presented by a covered employee to dispute the result of an alcohol test administered under this Chapter.

3. Records related to other violations of this Chapter.

- 4. Records related to evaluations:
  - a. records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance;

b. records concerning a covered employee's

compliance with the recommendations of the substance abuse professional.

5. Records related to the operator's MIS annual testing data.

6. Records related to education and training:

a. materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse;

b. documentation of compliance with the requirements of §3335;

c. documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion;

d. certification that any training conducted under this Chapter complies with the requirements for such training.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3333. Reporting of Alcohol Testing Results

A. Each large operator (having more than 50 covered employees) shall submit an annual management information system (MIS) report to RSPA of its alcohol testing results in the form and manner prescribed by the administrator, by March 15 of each year for the previous calendar year (January 1 - December 31). The administrator may require by written notice that a small operator (50 or fewer covered employees), not otherwise required to submit annual MIS reports, submit such a report to RSPA.

B. Each operator that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number of covered employees. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

C. Each report, required under this Section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, Room 2335, 400 Seventh Street, SW., Washington, DC 20590 and concurrently to the Commissioner of Conservation, Office of Conservation, Box 94275, Baton Rouge, LA 70804-9275.

D. Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of §§3319-3327 of this Chapter shall be submitted on "RSPA Alcohol Testing MIS Data Collection Form" and include the following informational elements:

1. number of covered employees;

2. number of covered employees subject to testing under the alcohol misuse rule of another operating administration by each agency;

3.a. number of screening tests by type of test;

b. number of confirmation tests by type of test;

4. number of confirmation tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

5. number of confirmation tests indicating an alcohol concentration of 0.04 or greater, by type of test;

6. number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§3339 and 3347;

7. number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater;

8. number of covered employees who were found to have violated other provisions of §§3319-3325, and any action taken in response to the violation;

9. number of covered employees who refused to submit to an alcohol test required under this Chapter, and the action taken in response to the refusal;

10. number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

E. Each report with no screening alcohol test results of 0.02, or greater or violations of the alcohol misuse provisions of §§3319-3327 of this Chapter shall be submitted on "RSPA Alcohol Testing MIS Data Collection EZ Form" and include the following informational elements. (This "EZ" report may only be submitted if the programs results meet these criteria):

1. number of covered employees;

2. number of covered employees subject to testing under the alcohol misuse rule of another operating administration identified by each agency;

3. number of screening tests by type of test;

4. number of covered employees who refused to submit to an alcohol test required under this Chapter, and the action taken in response to the refusal;

5. number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

F. A consortium may prepare reports on behalf of individual pipeline operators for purposes of compliance with this reporting requirement. However, the pipeline operator shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3335. Access to Facilities and Records

A. Except as required by law or expressly authorized or required in this Chapter, no employer shall release covered employee information that is contained in records required to be maintained in §3331.

B. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records

requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

C. Each operator shall permit access to all facilities utilized in complying with the requirements of this Chapter to the secretary of transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

D. Each operator shall make available copies of all results for employer alcohol testing conducted under this Chapter and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the secretary of transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.

E. When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

F. An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

G. An operator may disclose information required to be maintained under this Chapter pertaining to a covered employee to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this Chapter, or from the operator's determination that the covered employee engaged in conduct prohibited by §§3319-3327 (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

H. An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3337. Removal from Covered Function

Except as provided in §§3343-3347, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§3319 through 3327 or an alcohol misuse rule of another DOT agency.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3339. Required Evaluation and Testing

No operator shall permit a covered employee who has engaged in conduct prohibited by §§3319-3327 to perform

covered functions unless the employee has met the requirements of §3347.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3341. Other Alcohol-Related Conduct

A. No operator shall permit a covered employee tested under the provisions of §3329, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

1. the employee's alcohol concentration measures less than 0.02 in accordance with a test administered under §3329.A.5; or

2. the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

B. Except as provided in Subsection A of this Section, no operator shall take any action under this Chapter against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this Chapter from taking any action otherwise consistent with law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

### §3343. Operator Obligation to Promulgate a Policy on the Misuse of Alcohol

A. General Requirements. Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

1. The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this Chapter, and to each person subsequently hired for or transferred to a covered position.

2. Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

B. Required Content. The materials to be made available to covered employees shall include detailed discussion of at least the following:

1. the identity of the person designated by the operator to answer covered employee questions about the materials;

2. the categories of employees who are subject to the provisions of this Chapter;

3. sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this Chapter;

4. specific information concerning covered employee conduct that is prohibited by this Chapter;

5. the circumstances under which a covered employee will be tested for alcohol under this Chapter;

6. the procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee;



7. the requirement that a covered employee submit to alcohol tests administered in accordance with this Chapter;

8. an explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences;

9. the consequences for covered employees found to have violated the prohibitions under this Chapter, including the requirement that the employee be removed immediately from covered functions, and the procedures under §3347;

10. the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04;

11. information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

C. **Optional Provisions.** The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this Chapter. Any such additional policies or consequences shall be clearly described as being based on independent authority.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

#### §3345. Training for Supervisors

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §3329.A.2 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

#### §3347. Referral, Evaluation, and Treatment

A. Each covered employee who has engaged in conduct prohibited by §§3319 - 3327 of this Chapter shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

B. Each covered employee who engages in conduct prohibited under §§3319 - 3327 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

C.1. Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§3319 - 3327 of this Chapter, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

2. In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse:

a. shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under Subsection B of this Section and

b. shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

D. Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.

E. The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This Subsection does not prohibit a substance abuse professional from referring an employee for assistance provided through:

1. a public agency, such as a state, county, or municipality;

2. the operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;

3. the sole source of therapeutically appropriate treatment under the employee's health insurance program; or

4. the sole source of therapeutically appropriate treatment reasonably accessible to the employee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

#### §3349. Contractor Employees

With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this Chapter be carried out by the contractor provided:

1. the operator remains responsible for ensuring that the requirements of this Chapter and 49 CFR part 40 are complied with; and



2. the contractor allows access to property and records by the operator, the administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this Chapter and 49 CFR part 40.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the Conservation Auditorium, First Floor, State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA at 9 a.m., June 26, 1995.

At such hearing, the commissioner of conservation will consider evidence relative to the proposed amendments to the pipeline safety drug testing and alcohol misuse regulations.

The proposed amendments represent the views of the commissioner as of this date; however, the commissioner reserves the right to make additions or deletions prior to final adoption.

Comments and views regarding the proposed amendments should be directed in written form to be received not later than 5 p.m., June 22, 1995. Oral comments will be received at the hearing but should be brief and not cover the entire matters contained in the written comments. If accommodations are required under the Americans with Disabilities Act, please contact the Pipeline Division at (504)342-5516, within 10 working days of the hearing date. Direct comments to Ernest A. Burguières, III, Commissioner of Conservation, Box 94275, Baton Rouge, LA 70804-9275, RE: Docket No. PL 95-049. All parties having interest in the aforesaid shall take notice.

Ernest A. Burguières, III  
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Pipeline Safety—Drug  
Testing/Alcohol Misuse**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no increase in 1995-96 fiscal year, this regulation amends existing regulations. Administration will be carried out with existing personnel.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed amendments will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed amendments will have minor costs and/or economic benefits to directly affected persons or

nongovernmental groups. The minor costs will be due to the need to implement an alcohol program.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed amendments will not have any effect on competition and employment.

Mariano G. Hinojosa  
Director  
9505#049

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Social Services  
Office of Community Services**

**Limitation of Funds for Treatment (LAC 67:V.203)**

The Department of Social Services, Office of Community Services, proposes to adopt the following rule. This proposed rule will limit the use of Office of Community Service funds for treatment to a six-month period to make more effective use of available funds and to avoid deficit spending.

**Title 67**

**SOCIAL SERVICES**

**Part V. Office of Community Services**

**Subpart 3. General Administration**

**Chapter 2. Treatment**

**§201. Reserved**

**§203. Limitation of Funds for Treatment**

A. The purpose of establishing limits on the duration of formal therapy is to encourage the more effective use of available funds and achieve consistency between delivery of treatment and program policy which calls for short term service provision and timely achievement of permanency goals.

B. Treatment of child protection and family services clients and for clients in services to parents (SP) cases in the Foster Care Program will be time-limited and goal directed. No individual, family, or other treatment for these clients shall exceed six months. The only exception is for SP cases. In SP cases, two extensions of up to three months each may be authorized if it appears, based on a review of a detailed treatment plan and current case information, that the goal of reunification or adoption can reasonably be achieved during this time. Treatment in SP cases involving children whose permanency goal is other than reunification or adoption shall not exceed six months.

**AUTHORITY NOTE:** Promulgated in accordance with Act 15 of 1994 (State Appropriations bill).

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Office of Community Services, LR 21:

Interested persons may submit written comments for 40 days from the date of this publication to: Brenda L. Kelley, Assistant Secretary, Box 3318, Baton Rouge, LA 70821. She is the person responsible for responding to inquiries.

Gloria Bryant-Banks  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Treatment Limits**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
The estimated cost is \$500 for manual material. There are no other costs or savings as we are not increasing or decreasing the amount of treatments funds being expended. This rule is to encourage the more effective use of available funds and to avoid deficit spending.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
There will be no effect on revenue collections of state or local governmental units.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**  
There will not be any costs nor economic benefits to directly affected persons or nongovernmental groups.
- IV. **ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**  
There will be no effect on revenue competition and employment.

Robert J. Hand  
Director  
Fiscal Division  
9505#037

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Department of Social Services  
Office of Family Support**

**Flood Insurance (LAC 67:III.4702)**

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.Subpart 10, Individual and Family Grant (IFG) Program.

Pursuant to Public Law 103-325, the National Flood Insurance Reform Act of 1994, changes in regulations for the Individual and Family Grant Program were made at 44 CFR 206.131. As a condition of eligibility for assistance, applicants who reside in a flood zone were previously required to purchase and maintain flood insurance for a period of three years. Applicants will now be required to maintain the insurance for as long as they reside on the property.

**Title 67**

**SOCIAL SERVICES**

**Part III. Office of Family Support**

**Subpart 10. Individual and Family Grant Program  
Chapter 47. Application, Eligibility, and Furnishing Assistance**

**Subchapter C. Need and Amount of Assistance  
§4702. Flood Insurance**

A. In order to be eligible for assistance under the IFG Program, an individual or family residing on property located in a flood hazard zone and whose losses are the result of flooding must agree to purchase adequate flood insurance and

maintain such insurance for as long as they live in the home. This maintenance provision also applies to individuals who buy, or otherwise have transferred to them, any real estate for which flood insurance maintenance has been required.

\* \* \*

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

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

Interested persons may submit written comments within 30 days to: Howard L. Prejean, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-9065. He is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on June 28, 1995 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call 504-342-4120 (Voice and TDD).

Gloria Bryant-Banks  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Flood Insurance Requirement**

- I. **ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
The only implementation cost to state government is the approximate \$200 charge for publishing this notice and final rule; the IFG Program incurs costs only in the event of a disaster declaration. Because this action extends the requirement for maintenance of flood insurance, it will result in savings of future IFG grant funds that might otherwise have been spent. The rule has no economic impact on local governmental units.
- II. **ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**  
There will be no effect on revenue collection of state or local governmental units.
- III. **ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**  
Since this rule requires persons who have received an IFG grant to maintain flood insurance for more than the three years previously required, there will be increased costs to them in the form of annual flood insurance premiums.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule will have no impact on competition or employment.

Howard L. Prejean  
Assistant Secretary  
9505#036

David W. Hood  
Senior Fiscal Analyst

NOTICE OF INTENT

Department of Social Services  
Office of the Secretary

Child Care Assistance Program (LAC 67:I.Chapter 1)

The Department of Social Services, Office of the Secretary proposes to adopt the following rule in the Child Care Assistance Program effective September 1, 1995.

This rule revises payment formulas and standard rates in the Child Care Assistance Program.

Title 67

SOCIAL SERVICES

Part I. Office of the Secretary

Chapter 1. Child Care Assistance Program

§103. Funding Availability and Waiting Lists

A. Louisiana's share of the national total of available funds for child care programs is based on factors determined by federal law and regulation. Funds are appropriated by Congress, and allocated on an annual basis. The number of children that can be served by the Child Care Assistance Program is limited by the amount of funding available.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and Parts 255 and 257.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1269 (November 1992), LR 19:1441 (November 1993), LR 20:460 (March 1994), LR 20:900 (August 1994), LR 21:

§105. Child Care Providers

A. - C. ...

D. Family day care home providers and in-home child care providers must be at least 18 years of age, and provide verification of Social Security number and residence, to be eligible for participation. Under the Child Care and Development Block Grant, relatives providing child care to only grandchildren, nieces and/or nephews must apply for registration as family day care homes, and must meet registration requirements within one year. The use of funds for sectarian worship or instruction, or the purchase of land or buildings, is prohibited.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:288 (March 1992), amended LR 18:1269 (November 1992), LR 19:659 (May 1993), LR 19:784 (June 1993), LR 19:1034 (August 1993), LR 19:695 (November 1993), LR 20:459 (April 1994), LR 21:

§107. Payments

A. - B. ...

C. The following four levels will be used to determine the number of hours authorized for payment:

1. Level 1: 1-10 hours each week = 40 hours authorized per four-week period;

2. Level 2: 11-20 hours each week = 80 hours authorized per four-week period;

3. Level 3: 21-30 hours each week = 120 hours authorized per four-week period;

4. Level 4: 31 or more hours/week = 160 hours authorized per four-week period;

5. number of hours authorized is based on the lesser of:

a. the number of hours the child is actually in care each week; or

b. the number of hours the parent or guardian is working and/or attending a job training or educational program each week. For households with two parents or guardians, the hours for the individual with the lesser number are used. For children in care for more than 20 hours a week and attending school, the hours that the parent or guardian works and/or attends school or training while the child is in school are deducted from the total hours that the parent or guardian works and/or attends school or training.

D. Payments are based on the number of hours as determined in C, above, paid at a standard hourly rate of \$1.38 for children under age 2 in a Class A center, or \$1.25 for all other children. If the provider charges a higher rate for a child verified to need special child care services (specialized facilities, lower staff ratio and/or specialized training to meet the developmental and physical needs of the child) because of a mental, physical or emotional disability, the standard hourly rate for such special needs child care is \$1.72 for children under age 2 in a Class A center, or \$1.56 for all other children.

E. The payment amount for each four-week period is a percentage as shown in Subsection A of this section, based on the household's countable monthly income, that is applied to the number of authorized hours and the standard hourly rate as determined in Subsections C and D of this section.

F. Payment will not be made for more than one week of absence by a child in any four-week period. Payment will not be made for an extended closure by a provider of more than five consecutive days in any calendar month.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, LR 18:1269 (November 1992), amended LR 19:695 (November 1993), LR 20:459 (April 1994), LR 21:

Interested persons may submit written comments by June 27, 1995 to: Linda Beauvais, Administrator, Child Care Assistance Program, Department of Social Services, Box 91193, Baton Rouge, LA 70821. She is the person responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held June 27, 1995 in the Second Floor Auditorium, 755 Third Street, Baton

Rouge, LA beginning at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

Gloria Bryant-Banks  
Secretary

## NOTICE OF INTENT

Department of Social Services  
Office of Rehabilitation Services

Policy Manual (LAC 67:VII.101)

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Payment Formula; Registration**

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed agency rule revises the payment formula and standard payment rates in the Child Care Assistance Program. The impact on the number of children receiving program benefits, and the number of children found eligible for program benefits and placed on waiting lists, will be negligible. This rule also requires that family day care home and in-home child care providers verify their Social Security numbers and residence. There are no costs or savings associated with implementation of this rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This rule will have no effect on revenue collections. The Child Care Assistance Program is allocated funds under the federal Child Care and Development Block Grant and the Title IV-A At-Risk Child Care Program. The Child Care and Development Block Grant is 100 percent federal funds; the At-Risk Program is matched at the Medicaid matching rate. Revenues available to Louisiana are as follows:

Fiscal Year	Federal Funds	State Funds
93/94	\$23,623,963	
94/95	\$29,563,780	\$ 1,950,725
95/96	\$29,839,008	\$ 1,950,725

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The full amount of each year's allocated funding will be used for activities to increase the affordability, availability and quality of child care in Louisiana. As of December 31, 1994, there were 6658 children in child care subsidized by these funds. In addition, there were 623 Class A child care centers, 560 Family Day Care Homes, and 307 in-home providers receiving payments for providing child care. The proposed payment formula and standard rates will have a negligible impact on the number of children receiving program benefits, and the number of children found eligible for program benefits and placed on waiting lists. The formula for determining payments will be used regardless of changes in the amount of allocated funding; therefore, if funding decreases, fewer families will be served.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no impact on competition or employment.

John Joseph  
Deputy Secretary  
9505#039

David W. Hood  
Senior Fiscal Analyst

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) is revising its policy through the notice of intent provision to allow the agency to provide continuing services to applicants and clients.

The purpose of this notice of intent is to assure that funds will be available to provide for the health, safety, and welfare for all clients of the agency by implementing certain cost containment measures. These cost containment policies are being instituted to ensure that all clients of LRS are evaluated concerning their ability to contribute to the cost of their vocational rehabilitation program which has, as the ultimate goal, a successful employment outcome.

### Title 67

### SOCIAL SERVICES

### Part VII. Louisiana Rehabilitation Services

### Chapter 1. General Provisions

### §101. Policy Manual

LRS Policy Manual provides opportunities for employment outcomes and independence to individuals with disabilities through vocational and other rehabilitation services. Its policy manual guides its functions and governs its actions within the parameters of federal law.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:664.6 and R.S. 36:477.

**HISTORICAL NOTE:** Promulgated by the Department of Social Services, Louisiana Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 21:189 (February 1995), amended LR 21:

Public Hearings will be conducted on June 29, 1995, in Alexandria, Baton Rouge, New Orleans, and Shreveport, beginning at 10 a.m. The hearing locations are as follows: Alexandria Regional Office, 900 Murray Street; Baton Rouge Regional Office, 2097 Beaumont Drive; New Orleans Regional Office, 2026 St. Charles Avenue; Shreveport Regional Office, 1525 Fairfield Avenue.

Individuals with disabilities who require special services should contact Louisiana Rehabilitation Services at least seven working days prior to the hearing if they wish to attend. For assistance call 504-925-4131 or 1-800-737-2958 or for Voice and TDD 1-800-543-2099.

Interested persons may submit written comments by July 10, 1995, to May Nelson at the LRS address below. She is responsible for responding to inquires regarding the proposed rule.

The entire Policy Manual may be viewed at Louisiana Rehabilitation Services State Office, 8225 Florida Boulevard, Baton Rouge, LA 70806, at the nine Louisiana Rehabilitation Services Regional Offices (statewide) or at the Office of the State Register, 1051 North Third Street, Suite 512, Baton Rouge, LA 70802.

Gloria Bryant-Banks  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Policy Manual**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is an estimated \$2,460 implementation cost.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
Louisiana Rehabilitation Services has sufficient funds to provide client services and administer the program as Act 15 was approved by the Louisiana Legislature.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
Louisiana Rehabilitation Services has \$39.8 million budgeted in order to provide services to eligible individuals with severe disabilities on a first come first serve basis.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
There is no proposed change in competition and employment in the public and private sectors.

May Nelson  
Director  
9505#038

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

**Board of Examiners of the Associated Branch Pilots for  
the Port of New Orleans**

**Qualifications of Pilots (Rule 506)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 34:945 (A), the Board of Examiners of Bar Pilots for the Port of New Orleans hereby gives notice that it intends to amend and reenact Rule Number 506 (8) as follows.

**NAVIGATION AND SHIPPING**

**Part A. General Provisions**

**Rule 501-Rule 505**

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**§506. Qualifications of Pilots**

No person shall be recommended to the governor for appointment as a bar pilot unless the applicant (1) is a qualified elector of the state of Louisiana; (2) has served at least 12 months next preceding the date of his application in

a pilot boat at the mouth of the Mississippi River or other entrances into the Gulf of Mexico or other outside waters from the Port of New Orleans; (3) has successfully passed the examination given by the board of examiners, as required by R.S. 34:948; (4) owns or has made a binding legal agreement to acquire as owner or part owner of at least one decked pilot boat of not less than 50 tons burden, which is used and employed exclusively as a pilot boat, as required by R.S. 34:950; (5) is a high school graduate, or in lieu thereof holds a third mate's license; (6) has served at least one year at sea on a sea-going vessel of not less than 1,600 gross tons in the deck department; (7) has successfully passed a physical examination which in the judgement of the board of examiners includes those standards, such as vision, color perception and hearing tests, to perform duties as a bar pilot; (8) is of good moral character; and (9) shall have completed satisfactorily an apprenticeship program which culminates in a cubing period of not less than nine months duration handling vessels over the routes of the bar pilots under the supervision of not less than 25 licensed state bar pilots.

Rule 507-508

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Interested persons may comment on the proposed change of Rule Number 506 (8) in writing until June 23, 1995 at the following address: Chalin O. Perez, Attorney for the Board of Examiners of Associated Branch Pilots for the Port of New Orleans, Box 1382, Braithwaite, LA 70040.

Chalin O. Perez  
Attorney

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Qualification of Pilots**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There are no implementation costs or savings to the state of Louisiana or local governmental units in either the adoption or implementation of the amendment of Rule §506(8).
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)  
There is no estimated effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)  
There are no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)  
The adoption and implementation of the proposed amendment to Rule Number 506(8) by the Board of Examiners will not effect competition and employment.

Chalin O. Perez  
Attorney  
9505#062

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

Black Bass (LAC 76:VII.179)

The Wildlife and Fisheries Commission hereby advertises its intent to establish a rule for possession of black bass in John K. Kelly-Grand Bayou Reservoir.

**Title 76**

**WILDLIFE AND FISHERIES**

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

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

**§179. Black Bass Regulations - John K. Kelly-Grand Bayou Reservoir**

It shall be unlawful to retain or possess black bass (*Micropterus spp.*) in John K. Kelly-Grand Bayou Reservoir located in Red River Parish. This rule will expire at midnight, May 31, 1997.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:326.3.

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

Interested persons may submit written comments on the proposed rule to Bennie J. Fontenot, Jr., Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, no later than 4:30 p.m., Wednesday, July 5, 1995.

Perry Gisclair  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Black Bass**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule will accelerate the establishment of the black bass populations in John K. Kelly-Grand Bayou Reservoir, a new reservoir located in Red River Parish. Upon establishment of a fisheries for black bass, increased visits from fishermen are anticipated. Increased employment is expected in the area immediately adjacent to the reservoir.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Needs, services, materials and equipment commensurate with

an expanded fisheries will boost employment and have both a direct and indirect economic benefit to the state.

Fredrick J. Prejean, Sr.  
Undersecretary  
9505#026

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

Black Bass—Atchafalaya Basin (LAC 76:VII.165)

The Wildlife and Fisheries Commission hereby advertises its intent to amend a rule for black bass size regulations in the Atchafalaya Basin and the Lake Verret Area.

**Title 76**

**WILDLIFE AND FISHERIES**

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

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

**§165. Black Bass Regulations - Atchafalaya Basin-Lake Verret Area**

It shall be unlawful to take or possess, while on the water or while fishing in the water, black bass less than 14 inches in total length in the area south of U.S. 190 from the West Atchafalaya Basin Protection Levee to the intersection of LA 1 and U.S. 190 due north of Port Allen, east of the West Atchafalaya Basin Protection Levee from U.S. 190 to U.S. 90, north of U.S. 90 from the West Atchafalaya Basin Protection Levee to LA 20, north and west of LA 20 from U.S. 90 to LA 1 in Thibodaux, south and west of LA 1 from LA 20 to U.S. 190. This rule will expire at midnight, September 30, 1997.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 56:326.3 and 325(C).

**HISTORICAL NOTE:** Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 19:361 (March 1993), amended LR 21:

Interested persons may submit written comments on the amended rule to Bennie J. Fontenot, Jr, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 no later than 4:30 p.m., Wednesday, July 5, 1995.

Perry Gisclair  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Black Bass—Atchafalaya Basin**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule should maintain the increased catch rates of black bass in the areas affected by Hurricane Andrew resulting in increased recreational fishing-related expenditures at marinas and other establishments. Increased visits from fishermen are anticipated. Increased employment in areas adjacent to the affected rule area is expected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Needs, services, materials and equipment concomitant with a successful fisheries will boost employment and have both a direct and indirect economic benefit to the state.

Fredrick J. Prejean, Sr.  
Undersecretary  
9505#025

David W. Hood  
Senior Fiscal Analyst

**NOTICE OF INTENT**

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

**Crawfishing on the Sherburne Wildlife Management  
Area (LAC 76:VII.177)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate a rule governing both recreational and commercial crawfishing on agricultural lands within the Sherburne Wildlife Management Area.

The text of this proposed rule may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Interested parties may submit written comments relative to the proposed rule until 4:30 p.m., July 5, 1995, to Hugh A. Bateman, Administrator, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898.

Perry Gisclair  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Crawfishing on the Sherburne Wildlife  
Management Area**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will not require much expenditure by the department. We anticipate that approximately 20 permits will be issued and will require three man days (two biologist and one clerical). An additional 15 man days will be needed to ensure compliance. The total cost will be \$2,750.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The department is proposing an administrative fee of \$50 per permit. It is anticipated that 20 permits will be issued and

\$1,000 will be returned to the department.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Those persons choosing to commercial crawfish on Sherburne will pay a \$50 administrative fee. This will enable them to catch and sell their crawfish. Failure to implement the rule will require the department to close crawfishing activities on the area and have an unknown economic impact on those individuals.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect since everyone will be given the opportunity to acquire a permit to commercially crawfish on the area.

Fredrick J. Prejean, Sr.  
Undersecretary  
9505#027

David W. Hood  
Senior Fiscal Analyst

# POTPOURRI

## POTPOURRI

**Department of Agriculture and Forestry  
Horticulture Commission**

**Retail Floristry Examination**

The next retail floristry examination will be given July 24-28, 1995 at 9:30 a.m. at the State Police Training Academy, Building B, Room 8, Baton Rouge, LA. The deadline for sending application and fee is June 23, at 4:30 p.m. No applications will be accepted after June 23, 1995.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3118, Baton Rouge, LA 70821-3118, telephone (504) 925-7772.

Any individual requesting special accommodations due to a disability should notify the Horticulture Commission office prior to June 23, 1995. An accommodation request which is made after the date indicated above will be honored, but please be advised that a late request may result in a three month delay in your exam date. If you have any questions, please call our office at (504) 925-7772.

Bob Odom  
Commissioner

9505#066



**POTPOURRI**

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

**Annual Toxics Emissions Report**

The Department of Environmental Quality, Office of Air Quality and Radiation Protection has published the Louisiana Air Toxics Annual Emissions Report. This report compares the 1993 toxic air pollutant emissions to the 1987 toxic air pollutant emissions baseline. The report was prepared in accordance with the requirements of R.S. 30:2060.G. Interested persons may obtain copies of the report after May 20, 1995, by contacting Annie Vashishta of the Office of Air Quality and Radiation Protection at (504) 765-0134.

James H. Brent  
Administrator

9505#069

**POTPOURRI**

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

**Architectural and Industrial Maintenance Coatings (AIM)  
(LAC 33:III.Chapter 21) (AQ107)**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the secretary gives notice that the Office of Air Quality and Radiation Protection will withdraw the proposed amendments to LAC 33:III. Chapter 21, Architectural and Industrial Maintenance Coatings Regulation (AIM), Log AQ107. The proposed rule was submitted in order to meet VOC reductions mandated by the 1990 Clean Air Act Amendments. This rule was in lieu of federal regulations which are now scheduled to be promulgated in 1996.

During the public comment period for AQ107, LDEQ received numerous requests for changes, as well as requests to stop the rulemaking process to wait for a federal regulation.

Recent policy memoranda from EPA have allowed states to take credit for the VOC reductions anticipated from a federal AIM rule without adopting a state rule. Therefore, the Air Quality Division would like to withdraw rulemaking on AQ107. If you have any questions, please call Annette Sharp at (504)765-0914.

Gus Von Bodungen,  
Assistant Secretary

9505#067

**POTPOURRI**

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

**Transportation Conformity Exemption Public Hearing**

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq. and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the Office of Air Quality and Radiation Protection is requesting a section 182 NO<sub>x</sub> transportation conformity exemption request under the 1990 Clean Air Act Amendments. This request includes the Baton Rouge six-parish area (Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee and West Baton Rouge parishes).

The public hearing to receive comments on this proposed request is scheduled for 1:30 p.m., Thursday, June 29, 1995 in Room 326 in the Maynard Ketchum Building located at 7290 Bluebonnet, Baton Rouge, LA.

Interested persons are invited to attend and submit oral comments on the request. All interested persons are also invited to submit written comments concerning this request. Such comments should be submitted no later than July 6, 1995 to Ms. Teri Lanoue, LDEQ, at the following address: Office of Air Quality and Radiation Protection, Box 82135, Baton Rouge, LA 70884-2135. Ms. Lanoue may be contacted at (504) 765-0219. A copy of the request may be viewed from 8:00 a.m. to 4:30 p.m., Monday through Friday, at:

- (1) DEQ Headquarters, Air Quality Regulatory Division, 7290 Bluebonnet, Second Floor, Baton Rouge, LA;
- (2) State Library of Louisiana, the Louisiana Section, 760 North Third Street, Baton Rouge, LA; or
- (3) DEQ Capital Regional Office, 11720 Airline Highway, Baton Rouge, LA.

Gus Von Bodungen  
Assistant Secretary

9505#068

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